

# BCI EXHIBIT

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HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC. et al., (Jointly Administered)

Debtors.

HIGHLY CONFIDENTIAL  
DEPOSITION OF PATRICK CLACKSON

Friday, September 4, 2009

At: 9:00 am

Taken at:

Barclays

1 Churchill Place

London

United Kingdom

Reported by: AILSA WILLIAMS  
Certified LiveNote Reporter

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<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON 2 A P P E A R A N C E S 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, NY 10017-6702 7 BY: JAYANT W. TAMBE, ESQ 8 BRIDGET CRAWFORD, ESQ</p> <p>9 10 BOIES, SCHILLER &amp; FLEXNER, LLP 11 Attorneys for Barclays Capital and the 12 Witness 13 5301 Wisconsin Avenue N.W 14 Washington D.C 20015 15 BY: HAMISH HUME 16 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, 17 LLP 18 Attorneys for the Creditors Committee 19 16 Old Bailey 20 London, United Kingdom EC4M 7EG 21 BY: MATTHEW BUNTING, ESQ.</p> <p>22 HUGHES, HUBBARD &amp; REED, LLP 23 Attorneys for the SIPA Trustee 24 1775 I Street, N.W 25 Washington D.C. 20006-2401 BY: JOHN F. WOOD</p> <p>Also Present: PHILIP E. KRUSE: Alvarez &amp; Marsal</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON 2 3 I N D E X 4 PATRICK CLACKSON .....5 5 DIRECT EXAMINATION BY MR. TAMBE: .....5 6 CROSS-EXAMINATION BY MR. WOOD: ..... 149 7 CROSS-EXAMINATION BY MR. BUNTING: ..... 163 8 FURTHER CROSS-EXAMINATION BY MR. .... 170 9 WOOD:</p> <p>10 INDEX OF EXHIBITS 11 Exhibit 349A (Privileged, not ..... 27 12 attached)</p> <p>13 Exhibit 350A (Privileged) ..... 30 14 Exhibit 351A E-mail, Sept 15, 08 ..... 31 15 Exhibit 352A E-mail, Sept 16, 08 ..... 36 16 Exhibit 353A E-mail, Sept 24, 08 ..... 41 17 Exhibit 354A E-mail, Sept 16, 08 ..... 42 18 Exhibit 355A E-mail, Sept 16, 08 ..... 59 19 Exhibit 356A E-mail, Sept 17, 08 ..... 71 20 Exhibit 357A E-mail, Sept 17, 08 ..... 73 21 Exhibit 358A E-mail, Sept 18, 08 ..... 85 22 Exhibit 359A E-mail, Sept 20, 08 ..... 87 23 Exhibit 360A E-mail, Sept 20, 08 ..... 88 24 Exhibit 361A E-mail, Sept 22, 08 ..... 88 25 Exhibit 362A E-mail, Sept 19, 08 ..... 98 Exhibit 363A E-mail, Sept 23, 08 ..... 101 Exhibit 363A E-mail, Sept 23, 08 ..... 101</p>
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A. I am the Chief Financial Officer of Barclays Capital, which is the investment banking division of Barclays.

**Q. To whom do you report?**

A. I report to Rich Ricci, who is the Chief Operating Officer of Barclays Capital, and Chris Lucas, the Chief Financial Officer of Barclays.

**Q. How long have you been with Barclays?**

A. I have been with Barclays just over 10 years.

**Q. How long in your current position?**

A. Probably about 5 years in my current position.

**Q. In broad strokes, if you can tell me what role you played in the days leading up to the Lehman bankruptcy in discussions with Lehman or any due diligence of Lehman, so in the pre-bankruptcy period what role you played?**

A. I didn't have any discussions with Lehman. I was involved in various internal Barclays discussions. Really at a very high level, we looked at Lehman's financials and the possibility of what a Lehman's/Barclays merger may look like, but it was from publicly available

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information and very high level.

**Q. Are you aware that there was a due diligence session on the weekend of 13/14 September where more detailed information was provided to Barclays by Lehman?**

A. Yes. So during that period, I went to New York on Friday night, so I can't remember what the date of that Friday was.

**Q. The 12th?**

A. That was the 12th, and I arrived in New York on probably quite a late flight. I arrived in New York about midnight and I went to our offices, where I think the results of some of that due diligence or the early results of that due diligence were being discussed.

**Q. Do you remember anything in particular that you were asked to comment on or participate in in that period, so the night of the 12th through the weekend?**

A. Through that weekend we were doing quite a lot of work to try and pull together proforma statements for Barclays and Lehman's, and to look at what synergies there might be going forward if we were to acquire the whole of Lehman's. So by

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synergies I mean whether there is areas where we would have got additional income, were there areas where we would have had income overlaps at lower income, where we may have been able to take out costs, where we had costs overlap, and equally what we thought the costs of integration were likely to be.

I was also involved in trying to look at what the balance sheet we would be acquiring would look like, because we are under different accounting rules. We are under international accounting standards, where Lehman was under US GAAP, and their numbers, trying to convert their numbers with very limited data to have an international accounting standards equivalent to work out what their numbers would look like, and also calculate what the regulatory capital impact of acquisition would be.

**Q. Is it fair to say that over that weekend broadly the types of issues that you were involved in were accounting and tax related issues concerning the contemplated transaction?**

A. The issues I was involved in were I suppose accounting. I am talking about estimated future projections -- I don't know if you call that accounting or planning -- and

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regulatory issues. Also I suppose I was loosely involved in tax, but more in regulatory and accounting rather than tax issues.

**Q. Do you recall any discussions that weekend, so the Friday 12th through the 14th, about marking down the Lehman valuations on their trading positions?**

A. The meeting I referred to earlier, when I arrived late on the Friday night, was the initial result of our different business heads who had looked at -- who had preliminary reviews of the balance sheets of the different businesses. In most cases the conversations at that time were very preliminary, in terms of they had only had four or five hours to try and look at an entire activity in a location. They probably had talked to the head of the desk and some of them may have looked at information.

The main focus I remember was on some of the areas such as the commercial real estate and private equity, where even from that very preliminary work we had significant concerns in the valuations, and we also had significant concerns in the regulatory capital impact of taking on those businesses, because the regulatory rules are different in

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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2     the UK from the US, and particularly around the private</p> <p>3     equity holdings, they are very capially prohibitive to</p> <p>4     hold.</p> <p>5       So, I suppose, yes, from that there was</p> <p>6     some involvement looking at some of that activity.</p> <p>7     We didn't think we would be able to take on,</p> <p>8     partly due to the very high level of uncertainty</p> <p>9     and partly due to the fact that we didn't have</p> <p>10    sufficient regulatory capital, to take on some of</p> <p>11    those activities. So that was a particular focus</p> <p>12    I remember.</p> <p>13       In terms of the other areas, ongoing</p> <p>14    through the weekend, people were continuing to do</p> <p>15    that work, and I suppose I was not directly</p> <p>16    controlling that work but I remember that I recall</p> <p>17    that there were changes and adjustments coming</p> <p>18    through as people got into more detail. I don't</p> <p>19    think that -- my recollection was that continued</p> <p>20    until actually we stopped doing the transaction,</p> <p>21    when we had to stop the people -- we had not</p> <p>22    actually finished doing that.</p> <p>23       Q. Let me just backtrack through the answer</p> <p>24    a little bit. You have described a discussion or</p> <p>25    process where you identified certain types of</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2     assets like the private equity investments and</p> <p>3     possibly others that you felt you could not in</p> <p>4     fact acquire. Is that fair?</p> <p>5       A. We identified, I suppose, two major</p> <p>6     classes, being the private equity business and the</p> <p>7     commercial real estate, where we thought either</p> <p>8     for regulatory capital purposes but also for</p> <p>9     difficulty around those valuations, we thought the</p> <p>10    level of uncertainty was so high it was a risk</p> <p>11    that we were not prepared to take. There may have</p> <p>12    been other areas which we looked at, I cannot</p> <p>13    recall.</p> <p>14       Q. With respect to those two areas, private</p> <p>15    equity, commercial real estate, those stayed off</p> <p>16    the table as the week progressed and the nature of</p> <p>17    the transaction changed, correct?</p> <p>18       A. I suppose so. Those were not part of</p> <p>19    the initial transaction. The subsequent</p> <p>20    transaction was a completely new and different</p> <p>21    transaction, specifically looking at the North</p> <p>22    American businesses, and specifically I think we</p> <p>23    excluded those two activities for commercial real</p> <p>24    estate and any private equity activities from</p> <p>25    there.</p>
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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       Q. Moving into the transaction that is</p> <p>3     discussed in the week, so after Lehman Brothers</p> <p>4     Holdings files for bankruptcy, other than those</p> <p>5     two items, do you recall any other asset classes</p> <p>6     being specifically excluded?</p> <p>7       A. What then happened, so we are talking</p> <p>8     just to clarify your question specifically about</p> <p>9     the valuations of assets, we were looking at</p> <p>10    acquiring as part of the North American</p> <p>11    business --</p> <p>12       Q. No, I am not getting to valuation yet.</p> <p>13    I am still at the level of are there buckets of</p> <p>14    assets where you say: "Look, given the uncertainty</p> <p>15    or other issues, regulatory issues, regulatory</p> <p>16    capital issues about those assets, we don't even</p> <p>17    want to look at them, we don't want them to be</p> <p>18    part of the discussion." You have identified</p> <p>19    private equity, commercial real estate. Were</p> <p>20    there any other buckets like that?</p> <p>21       A. There may have been, I can't recall, but</p> <p>22    those were the two big ones which stand out in my</p> <p>23    mind. There could have been others, I can't</p> <p>24    recall precise details.</p> <p>25       Q. Let's go back to the weekend. You</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2     talked about some aspects of this process but you</p> <p>3     also said as the weekend went on there were some</p> <p>4     adjustments being made to values of assets that</p> <p>5     you were interested in acquiring. Is that</p> <p>6     correct.</p> <p>7       A. I am not sure I said that.</p> <p>8       Q. If you didn't say that let me phrase it</p> <p>9     as a question. Were there any discussions over</p> <p>10    the weekend 12th, 13th, 14th, where for the assets</p> <p>11    that Barclays was contemplating acquiring, in the</p> <p>12    transaction that was being contemplated that</p> <p>13    weekend, where Barclays folks went through and</p> <p>14    adjusted the values that Lehman had ascribed to</p> <p>15    those assets?</p> <p>16       A. I think, as I said, that process was</p> <p>17    ongoing throughout that weekend. I am never sure</p> <p>18    if we quite completed that, but we were going</p> <p>19    through business by business and looking at those</p> <p>20    assets and ascribing what we thought were the fair</p> <p>21    values to those assets. When I say "we", the</p> <p>22    respective trading desk. This is a vague</p> <p>23    recollection. Somewhere there was, yes, a list of</p> <p>24    adjustments coming out of that, because we did</p> <p>25    have adjustments from different businesses when</p>

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2 going through that. So that was obviously  
3 something we were taking account of in terms of  
4 looking at the acquisition, in terms of what the  
5 impact of that would be.

6 So effectively what we would have do, if we had  
7 acquired the whole of Lehman's, was when we took it on we  
8 would have to do a fair value exercise, where we fair valued  
9 all the assets, which would mean their opening balance sheet  
10 at that time would be different from the Lehman closing  
11 balance sheet, so we were trying to estimate what those  
12 differences were.

13 Q. This may be an issue that will recur as  
14 we talk about the rest of the week, but that  
15 weekend was there any discussion about whether  
16 from an accounting or a tax perspective it made  
17 a difference whether the adjustments, the fair  
18 value adjustments were done while the assets were  
19 still on Lehman's books, as opposed to doing the  
20 fair value adjustments after you had acquired the  
21 assets? Do you recall any discussions along those  
22 lines?

23 MR. HUME: Object to the form of the  
24 question.

25 A. I suppose at no point did I have in that

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2 transaction any interest in what was in Lehman's  
3 books. I suppose what I was interested in was  
4 when we acquired Lehman's what the fair values  
5 would be in terms of my books and taking on my  
6 books, so that was my focus. I don't recall any  
7 conversation about that.

8 Q. This is a more generic question now.  
9 When you are looking at a particular security and  
10 doing a fair value adjustment, how would you go  
11 about doing fair value adjustment for a security?

12 A. That is a very general question.

13 Q. It is a very general question. What  
14 kinds of -- let me back up. Lehman had certain  
15 values ascribed to its assets, its balance sheet,  
16 as of the close of business on Friday the 12th,  
17 correct?

18 A. Yes.

19 Q. Over the weekend Barclays is making some  
20 educated guesses about fair value adjustments to  
21 some of those assets, correct?

22 A. We were looking at assets to make sure  
23 that we thought they were held at appropriate fair  
24 value.

25 Q. That is my question. How would Barclays

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2 determine whether or not Lehman's valuation of an  
3 asset was appropriate or not over the weekend?

4 A. What we tried to do over the weekend was  
5 we tried to get the experts, so the business  
6 people who have experience of operating in those  
7 different markets to look at the assets, because  
8 they, I suppose, if you just ratchet back, it was  
9 obviously a pretty -- there was a lot of turmoil  
10 at that time.

11 I think as you probably recall Fanny and Freddy  
12 the previous weekend had gone into receivership. There was  
13 a lot of problems, a lot of distrust in the market, a lot of  
14 volatility, and so in terms of what is an asset worth and  
15 what could you actually liquidate an asset for were more  
16 difficult than normal in terms of determining that.

17 So the people we had looking at the assets were  
18 the people who had experience of operating in those  
19 different markets, who would know at what level assets --  
20 I mean, there may be not many assets trading but at what  
21 level assets were trading which were trading, and what  
22 liquidation values of assets might be.

23 Q. Do you recall whether the exercise that  
24 weekend was in fact to ascribe liquidation values  
25 to the assets that Barclays was contemplating

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2 acquiring?

3 A. I go back to what I said. I think we  
4 were trying to ascribe fair values, which is what  
5 we had to do in terms of taking on an acquisition.

6 Q. Did you give any instructions to the  
7 traders or business people as to what approach  
8 they should use to ascribing fair value?

9 A. I was not as I said in New York earlier  
10 on, so I didn't give the instructions for the  
11 exercise they did.

12 Q. Do you know what measures or approaches  
13 those trading folks, the traders, used to ascribe  
14 fair value adjustments to the assets over the  
15 weekend beyond --

16 A. What I said earlier, I think what  
17 I used, the prices in terms of what they were  
18 seeing trading in the market, in terms of where  
19 they thought the books should be appropriately  
20 marked.

21 Q. Do you recall whether that adjustment,  
22 fair value adjustment over the weekend was done  
23 asset by asset, CUSIP by CUSIP or by asset  
24 category?

25 A. I suppose, as I said, I don't think the

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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       exercise was ever quite completed, but it was at</p> <p>3       a very -- my recollection is it was at a very high</p> <p>4       level, given the time. We only I think mobilized</p> <p>5       people on Friday and had to sort of make</p> <p>6       a decision on Sunday, so I think it almost</p> <p>7       definitely wouldn't be done on a CUSIP by CUSIP</p> <p>8       basis.</p> <p>9       The meeting when I arrived in New York, the</p> <p>10      general thinking of people was: "I have talked to a head</p> <p>11      trader, had a very quick look at the sort of asset classes</p> <p>12      they have got and I have not been able to drill into these</p> <p>13      bits or those bits", so it definitely was not a CUSIP by</p> <p>14      CUSIP review at that time.</p> <p>15      Q. Okay. Let's go into the week then. It</p> <p>16      sounded from one of your earlier answers that the</p> <p>17      exercise that was conducted over the weekend, that</p> <p>18      did not directly relate to -- did not directly</p> <p>19      result in a transaction being entered into,</p> <p>20      correct?</p> <p>21      A. Yes.</p> <p>22      Q. And the effort over the weekend was</p> <p>23      really for an acquisition of all of Lehman, is</p> <p>24      that correct?</p> <p>25      A. Yes. The work over the weekend was</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       looking at acquiring all of Lehman, with the</p> <p>3       exception of pieces we excluded which I mentioned</p> <p>4       earlier.</p> <p>5       Q. Let's get to Monday now. The</p> <p>6       discussions get resurrected at some point on</p> <p>7       Monday, is that correct?</p> <p>8       A. Yes. I suppose I heard about it first</p> <p>9       thing mid-Monday morning, probably about</p> <p>10      10 o'clock Monday, 10 or 11 o'clock Monday</p> <p>11      morning, that we had a chance to buy the North</p> <p>12      American business out of receivership.</p> <p>13      Q. Were you still in New York?</p> <p>14      A. I was still in New York, yes.</p> <p>15      Q. Who did you hear the news from?</p> <p>16      A. I heard that from Rich Ricci.</p> <p>17      Q. So now describe what you did in response</p> <p>18      to hearing that?</p> <p>19      A. I heard that news from Rich Ricci, and I</p> <p>20      was part of a group of people who went down to 745</p> <p>21      probably about midday Monday to negotiate the</p> <p>22      transaction to buy that business. I can't</p> <p>23      remember which floor it was, 32nd floor I think,</p> <p>24      where they have all their meetings rooms. We went</p> <p>25      up to that floor and I stayed there I suppose from</p>
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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       midday Monday until some point on Tuesday.</p> <p>3       Q. In Mr. Varley's deposition yesterday we</p> <p>4       defined or talked about Lehman one, Lehman two and</p> <p>5       Lehman three, where he described Lehman one as the</p> <p>6       weekend exercise, Lehman two as the transaction</p> <p>7       that was discussed and negotiated on the early</p> <p>8       part of the week and Lehman three as the</p> <p>9       transaction that ultimately is consummated, closed</p> <p>10      on 22nd September.</p> <p>11      A. Yes.</p> <p>12      Q. Is it fair if I use those phrases to</p> <p>13      describe the three different aspects of the</p> <p>14      transaction, just as shorthand?</p> <p>15      A. I am happy for you to use the shorthand.</p> <p>16      I am not sure about the distinction between Lehman</p> <p>17      two and Lehman three but I am happy for you to use</p> <p>18      that shorthand.</p> <p>19      Q. Let's focus on that. In your mind, in</p> <p>20      terms of the transaction that was negotiated in</p> <p>21      the early part of the week of the 15th, versus the</p> <p>22      transaction that ultimately closed on the morning</p> <p>23      of the 22nd, what differences if any were there,</p> <p>24      in your view?</p> <p>25      A. I suppose the most significant</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       differences in my view were we had initially</p> <p>3       transacted to acquire various assets and take on</p> <p>4       various liabilities. What we found out during</p> <p>5       that week is a lot of those assets were encumbered</p> <p>6       in some way. So the deal which had been agreed</p> <p>7       with us, the other side would no longer deliver</p> <p>8       the assets they said they had delivered and/or it</p> <p>9       was not necessarily possible to assume the</p> <p>10      liabilities in that deal as well, and the initial</p> <p>11      transaction which was really taking a long</p> <p>12      portfolio of assets and a short portfolio of</p> <p>13      assets, a lot of those assets which were included</p> <p>14      in that original transaction were no longer</p> <p>15      available, and the transaction became taking</p> <p>16      a different portfolio of assets and paying cash</p> <p>17      for that different portfolio of assets. That</p> <p>18      different portfolio of assets were not assets</p> <p>19      which had necessarily been subject to our detailed</p> <p>20      reviews on the Monday when we went through the</p> <p>21      assets we thought we were acquiring.</p> <p>22      So we were suddenly taking on an uninspected pool</p> <p>23      of assets which, using your terminology, despite the Lehman</p> <p>24      one work we had done, a number of the assets involved were</p> <p>25      assets which I don't think we had ever seen, and I think</p>

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2 some of them possibly were assets which were part of or had  
3 been part of the commercial real estate business that we had  
4 never really looked at in any detail, but I don't know that  
5 for sure.

6 To sum that up, we were taking a long and a short  
7 portfolio initially, and a portfolio which we had done  
8 a fair amount of due diligence on, and then we ended up  
9 taking a different long portfolio which we had not done due  
10 diligence on.

11 Q. In terms of the overlap of the assets  
12 between the portfolio that you had done the due  
13 diligence on and the portfolio that you ultimately  
14 end up acquiring, how much was there in terms of  
15 an overlap. Some, a lot?

16 A. You would have thought that was an easy  
17 question to answer, but it was not something --  
18 I could not answer the question. It was not  
19 something we were able to determine. So I think  
20 there probably was not a lot of overlap but it was  
21 not something which you could say: "We have looked  
22 at this bit and this bit is new", because the  
23 records were so completely different.

24 Q. The legal documentation for the  
25 transaction, how familiar were you with that

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2 documentation during that week?

3 A. I looked at various drafts of legal  
4 documentation, and having been involved in trying  
5 to negotiate the transaction wanted to ensure that  
6 the legal documentation reflected the transaction  
7 I thought which we had done.

8 I was not directly involved in the negotiation  
9 with Lehman's out of which the legal documentation came, so  
10 the first I saw were various drafts. I went through those  
11 drafts -- I should say I am not a lawyer. So I went through  
12 those drafts just trying to make sure I could sort of  
13 understand, as a layman, did they appear to reflect the  
14 transaction I thought we had done, and where I had questions  
15 or did not understand them I went back and talked to the  
16 lawyers to get clarification around those.

17 Q. The Asset Purchase Agreement, do you  
18 recall the first time you saw the Asset Purchase  
19 Agreement or any version of it?

20 A. It probably was -- I don't recall  
21 precisely when it was. It would have been earlier  
22 that week though.

23 Q. Do you recall seeing the Asset Purchase  
24 Agreement or any version of the Asset Purchase  
25 Agreement before it was actually executed by the

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1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2 parties?

3 A. I couldn't say precisely. I think it is  
4 possible I did but I can't remember precisely the  
5 time.

6 Q. Are you aware of a document that is  
7 referred to as a clarification letter?

8 A. Yes, I am. I am aware there was  
9 a clarification letter as well.

10 Q. What is your understanding -- withdraw  
11 that.

12 When was the first time you recall having seen the  
13 clarification letter or any version of it?

14 A. I suppose it is obviously after I saw  
15 the Asset Purchase Agreement and read through the  
16 Asset Purchase Agreement. Obviously, as you said,  
17 the movement from transaction two to transaction  
18 three, using your terms, there were significant  
19 changes. I think during that time I did see  
20 various different versions of the clarification  
21 letter, and as the transaction was changing,  
22 again, in the same way as I said I looked at the  
23 Asset Purchase Agreement to make sure it reflected  
24 the economics of the transaction I thought we had  
25 done, I tried to do the same with the

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1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2 clarification letter, to make sure I thought that  
3 reflected what I understood had been agreed.

4 I should tell you I flew back from New York to  
5 London on Wednesday night, so some point later in the week  
6 I was continuing to be involved but I was not so directly  
7 involved in a number of things.

8 Q. After the transaction closed, can you in  
9 broad terms give us an overview of what roles you  
10 played or tasks that you undertook in connection  
11 with the valuation of the assets, the accounting  
12 for the assets or the acquisition?

13 A. I had a team of people both in London  
14 and in New York who were involved in making sure  
15 that we booked all the transactions we had  
16 acquired, all the positions we had acquired  
17 correctly. Some of that was obviously done by the  
18 operations department, that those positions got on  
19 to our system, were valued, fed into our books and  
20 records, so that at an ongoing level we were able  
21 to risk manage those positions. As I said, there  
22 were some people trying to work out what the  
23 acquisition balance sheet -- so under ISRF  
24 accounting what the fair value of the assets and  
25 liabilities we had acquired would be, so what the



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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       sort of opening balance sheet would be.</p> <p>3       So I was directing that work. It took</p> <p>4       a significant amount of time, from really probably up until</p> <p>5       about January or February time until it was finally</p> <p>6       completed.</p> <p>7       Q. In terms of the assets acquired by</p> <p>8       Barclays in the acquisition, does Barclays now</p> <p>9       have all of the assets -- withdrawn.</p> <p>10       Did Barclays get all of the assets it believes it</p> <p>11       acquired in the acquisition?</p> <p>12       A. No. There is a significant number of</p> <p>13       the assets which we acquired which still have not</p> <p>14       been released by the estate or various third</p> <p>15       parties who are holding those assets. I think the</p> <p>16       precise quantum of that -- we disclosed something</p> <p>17       in our half year financial statement setting out</p> <p>18       what that was.</p> <p>19       Q. Do you know generally what categories or</p> <p>20       types of assets those are?</p> <p>21       A. Yes. There is quite a list of different</p> <p>22       assets, I think 10 or 15 types. I am not sure if</p> <p>23       I would be able to recall off the top of my head</p> <p>24       what all of those are but I know I could mention</p> <p>25       some. It probably won't be a complete list.</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       Q. I just want to know which ones are in</p> <p>3       you mind, and we will look at some documents as</p> <p>4       the day goes on.</p> <p>5       A. There are some, the 15c3 receivable</p> <p>6       assets. There are various security positions. I</p> <p>7       think there are some collateral and positions of</p> <p>8       various exchanges. Then there are significant</p> <p>9       amounts of client balances relating to the Lehman</p> <p>10       PIM business. I think it stands for Private</p> <p>11       Investment Management. As I said, I think there</p> <p>12       are some other classes which I can't recall.</p> <p>13       Q. And the total amount of those assets is</p> <p>14       the number that is reflected in the quarterly</p> <p>15       statement that was issued by Barclays in June?</p> <p>16       A. In the June statement, yes. We issue</p> <p>17       six monthly statements generally, so in the June</p> <p>18       statement it is referred to there.</p> <p>19       (Exhibit 349A marked for identification)</p> <p>20       Q. I have placed before you a document</p> <p>21       marked 349A, a 3-page document. Take a moment to</p> <p>22       review it.</p> <p>23       MR. HUME: Before you go any further,</p> <p>24       let me ask, this is a document -- I see a Bates</p> <p>25       stamp so I assume it came from our production.</p>
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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       MR. TAMBE: Yes.</p> <p>3       MR. HUME: But I see the name</p> <p>4       Ian Mackinnon, whom I understand to be a tax</p> <p>5       lawyer, an internal tax lawyer of Barclays. I had</p> <p>6       thought -- well, what our production team did --</p> <p>7       this document I believe is privileged. I have not</p> <p>8       seen this particular document before but it looks</p> <p>9       like it involved communications by Ian Mackinnon</p> <p>10       to business people at Barclays about the tax</p> <p>11       issue. I would like a moment off the record to</p> <p>12       review it because I think we will assert privilege</p> <p>13       over this document.</p> <p>14       MR. TAMBE: Okay.</p> <p>15       MR. HUME: And claw back this and any</p> <p>16       other documents involving Ian Mackinnon giving tax</p> <p>17       advice or raising tax issues. Can I have a moment</p> <p>18       off the record?</p> <p>19       MR. TAMBE: You can have a moment, yes.</p> <p>20       I am not saying I agree with you but you can have</p> <p>21       a moment off the record, that is fine.</p> <p>22       (A short break).</p> <p>23       MR. TAMBE: What is it going to be?</p> <p>24       MR. HUME: Do you want to do it on the</p> <p>25       record?</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       MR. TAMBE: Yes.</p> <p>3       MR. HUME: I do think we are asserting</p> <p>4       a privilege over the document and over any other</p> <p>5       documents relating to tax issues communicated with</p> <p>6       Ian Mackinnon, so we would assert our claw back</p> <p>7       rights over this document.</p> <p>8       MR. TAMBE: My next question is will you</p> <p>9       allow me to examine this witness about this</p> <p>10       document?</p> <p>11       MR. HUME: Since I am asserting my claw</p> <p>12       back right, no.</p> <p>13       MR. TAMBE: Fine, okay. Since you are</p> <p>14       asserting your claw back right now, no, you are</p> <p>15       not going to allow me to question him about this</p> <p>16       document. Is that right?</p> <p>17       MR. HUME: I think my understanding of</p> <p>18       the way it works is I am asserting my claw back</p> <p>19       right and therefore I think immediately I am</p> <p>20       entitled to essentially receive all of the</p> <p>21       versions of the document that you have, and</p> <p>22       therefore you don't have the document anymore, and</p> <p>23       therefore you cannot ask the witness about the</p> <p>24       document, correct.</p> <p>25       MR. TAMBE: And the only reason I press</p>

<p style="text-align: right;">Page 30</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 the point is if you are unsure as to whether or</p> <p>3 not you are going to claim privilege over this</p> <p>4 document, we have the witness here, I can question</p> <p>5 the witness about this document, if there is any</p> <p>6 uncertainty in your mind as to whether or not this</p> <p>7 is privileged.</p> <p>8 MR. HUME: No.</p> <p>9 MR. TAMBE: That is the reason I am</p> <p>10 asking the question.</p> <p>11 MR. HUME: Sorry, I didn't mean to</p> <p>12 suggest that. I believe it is privileged. We are</p> <p>13 asserting privilege and I am asserting the claw</p> <p>14 back right.</p> <p>15 MR. TAMBE: On that basis let's move on</p> <p>16 to the next exhibit. It should probably remain</p> <p>17 marked for identification purposes because it was</p> <p>18 the subject of discussion on the record. Just to</p> <p>19 be clear, that will be your position on any</p> <p>20 documents authored by Mr. Mackinnon?</p> <p>21 MR. HUME: Yes, I would expect so.</p> <p>22 MR. TAMBE: Let's just mark this for the</p> <p>23 record. I suspect you will take the same view,</p> <p>24 but let's mark this document.</p> <p>25 (Exhibit 350A marked for identification.)</p>	<p style="text-align: right;">Page 31</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 MR. HUME: Yes, this is more substantive</p> <p>3 relating to tax and I assert the privilege.</p> <p>4 MR. TAMBE: Let's get the record. We</p> <p>5 have marked the document as Exhibit 350A for</p> <p>6 identification purposes. Mr. Hume?</p> <p>7 MR. HUME: Yes, we assert privilege over</p> <p>8 this document as it appears to relate to tax</p> <p>9 advice from Mr. Mackinnon.</p> <p>10 MR. TAMBE: Without agreeing to your</p> <p>11 assertion of privilege on the basis that you have</p> <p>12 asserted it, I will move on to another document</p> <p>13 with the witness, but we reserve our rights</p> <p>14 obviously to challenge your claim of privilege.</p> <p>15 (Exhibit 351A marked for identification)</p> <p>16 I have placed before you a document</p> <p>17 marked Exhibit 351A for identification purposes.</p> <p>18 Can you take a moment to review the document and</p> <p>19 let me know when you are done and I will ask you</p> <p>20 a question or two about it. There is an e-mail</p> <p>21 exchange at the top of the page. There is an</p> <p>22 e-mail from you to Rich Ricci and Robert Le Blanc.</p> <p>23 Who is Robert Le Blanc?</p> <p>24 A. Robert Le Blanc is Barclays group head</p> <p>25 of risk, so he runs market risk and credit risk</p>
<p style="text-align: right;">Page 32</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 for Barclays group.</p> <p>3 Q. And you are responding to an e-mail that</p> <p>4 you had received from Rich Ricci in which he</p> <p>5 states: "Looks like roughly 50 billion will get</p> <p>6 them to call." Do you have an understanding as to</p> <p>7 what that was a reference to, the</p> <p>8 50 billion-dollar number?</p> <p>9 A. I don't really recall the numbers in</p> <p>10 this e-mail at all. My assumption is it is</p> <p>11 referring to assets, which is the title of the</p> <p>12 e-mail, but I don't recall the e-mail or the</p> <p>13 detail.</p> <p>14 Q. If you look at the date of these</p> <p>15 e-mails, these are all dated Monday September 15.</p> <p>16 Do you see that?</p> <p>17 A. Yes, I can see the date.</p> <p>18 Q. Right after the filing of the bankruptcy</p> <p>19 of Lehman Brothers correct? The filing was Monday</p> <p>20 morning?</p> <p>21 A. Yes.</p> <p>22 Q. And you had described earlier around</p> <p>23 midday Monday you had with your colleagues gone</p> <p>24 over to 745 Seventh Avenue to pick up the</p> <p>25 discussions on the transaction, correct?</p>	<p style="text-align: right;">Page 33</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 A. Yes, we went over there.</p> <p>3 Q. And at the very bottom of the chain</p> <p>4 there is an e-mail from Robert Le Blanc to Rich</p> <p>5 Ricci and you. He is asking the question: "Trying</p> <p>6 to understand the assets that would be included."</p> <p>7 Do you see that?</p> <p>8 A. Yes, I read the e-mail.</p> <p>9 Q. Is it your general recollection that the</p> <p>10 magnitude of the assets that were being considered</p> <p>11 early in the week of September 15 were in that</p> <p>12 50 billion-dollar range?</p> <p>13 MR. HUME: Objection, vague and</p> <p>14 ambiguous.</p> <p>15 A. I can't recall actually. The numbers</p> <p>16 moved around so much every time, I can't recall</p> <p>17 precisely what the numbers were, but they were all</p> <p>18 over the place during that period.</p> <p>19 Q. And there is a reference in Rich Ricci's</p> <p>20 e-mail, which is the middle e-mail in this chain.</p> <p>21 He states:</p> <p>22 "Will be Keegan and Mahon. All good and</p> <p>23 clean".</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

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<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 Q. Do you know what that is a reference to,</p> <p>3 the "all good and clean"?</p> <p>4 A. Looking at the e-mail, I think Mike</p> <p>5 Keegan and John Mahon are the two people I think</p> <p>6 it is referring to, and in terms of the people</p> <p>7 reviewing the assets I think Mike Keegan and John</p> <p>8 Mahon were the people given that responsibility to</p> <p>9 review that, together with their teams.</p> <p>10 In terms of the "all good and clean", I don't know</p> <p>11 precisely what that is referring to. I think you should ask</p> <p>12 Rich, talk to him.</p> <p>13 Q. We will. Putting the document aside,</p> <p>14 was it your recollection that when discussions</p> <p>15 resumed midday Monday with Lehman that Barclays</p> <p>16 were seeing this as an opportunity to identify the</p> <p>17 assets that Barclays wanted to purchase and leave</p> <p>18 behind the assets that Barclays had questions</p> <p>19 about?</p> <p>20 A. What we were looking at doing was -- the</p> <p>21 transaction we were looking at was effectively</p> <p>22 buying the assets and liabilities of the broker</p> <p>23 dealer, so Lehman Brothers Inc. We couldn't buy</p> <p>24 the broker dealer itself because of litigation</p> <p>25 around the Lehman estate, and obviously the broker</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 dealer was conjoined in a lot of that litigation.</p> <p>3 There were a number of other transactions which</p> <p>4 a broker dealer has, such as OTC derivative transactions and</p> <p>5 contracts, which were also subject to cross-default</p> <p>6 provisions and ISDA Master Agreements with other Lehman</p> <p>7 entities. So we felt we would be unable to buy or we would</p> <p>8 be unable to take on those transactions because they didn't</p> <p>9 have -- we didn't understand the liability around those or</p> <p>10 if they had good titles in them.</p> <p>11 So the transaction was looking at buying</p> <p>12 the assets of the broker dealer which were not</p> <p>13 contractual assets at that time, and the main</p> <p>14 classes of assets as I recall were securities and</p> <p>15 exchange traded derivatives.</p> <p>16 The broker dealer, because of the nature</p> <p>17 of regulated -- broker dealers had a more limited</p> <p>18 group of assets than we had seen in the total</p> <p>19 Lehman estate, so generally things like the</p> <p>20 commercial real estate assets and private equity</p> <p>21 assets were not part of the broker dealer.</p> <p>22 I am not sure, as I said, what this</p> <p>23 refers to, but I do know that Robert Le Blanc was</p> <p>24 very concerned about Barclays taking on some of</p> <p>25 those commercial real estate, private equity</p>
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<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 assets and would have been concerned when we had</p> <p>3 the new transaction about had any of those assets</p> <p>4 seeped back into the transaction, so the assets we</p> <p>5 had excluded from what you referred to as Lehman</p> <p>6 one, whether those assets had come back into this</p> <p>7 transaction. So I suspect, though as I said I</p> <p>8 don't know, but I suspect this will be referring</p> <p>9 to and he may have had conversations with Rich</p> <p>10 about does it have any of those assets, and</p> <p>11 I assume that is what Rich is responding to, but</p> <p>12 as I said I don't know precisely.</p> <p>13 (Exhibit 352A marked for identification)</p> <p>14 Q. I have placed before you a 3-page</p> <p>15 document marked Exhibit 352A. Take a moment to</p> <p>16 review it and let me know when you are done and I</p> <p>17 will ask you a couple of questions.</p> <p>18 Do you recognize this as an e-mail from Tom</p> <p>19 McCosker to various people at Barclays on which you were</p> <p>20 cc'd?</p> <p>21 A. I think it is an e-mail from Gary</p> <p>22 Romain, if you look at the first page of the</p> <p>23 e-mail.</p> <p>24 Q. Right.</p> <p>25 A. It says it is from Gary Romain using Tom</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 McCosker's e-mail.</p> <p>3 Q. Fair point. Do you recognize it as</p> <p>4 such?</p> <p>5 A. Yes. I don't recall the specific e-mail</p> <p>6 but I can see it is an e-mail from Gary, yes.</p> <p>7 Q. Who is Gary?</p> <p>8 A. Gary Romain is head of our technical</p> <p>9 accounting group and some of our other functions</p> <p>10 within finance, and on this transaction was -- he</p> <p>11 is based in London but he was in New York. He was</p> <p>12 the person I suppose I tasked with putting</p> <p>13 together the initial acquisition balance sheet</p> <p>14 drawn up under IFRS for Barclays.</p> <p>15 Q. If you look at the date of this e-mail,</p> <p>16 it is dated September 16, 2008. Do you see that?</p> <p>17 A. Yes, GMT, which means I think it</p> <p>18 was sent from New York. It would have been about</p> <p>19 midnight New York time on Monday the 15th.</p> <p>20 Q. Monday night into Tuesday?</p> <p>21 A. Yes.</p> <p>22 Q. On the acquisition summary, which is the</p> <p>23 third page of Exhibit 352A, the entry at the</p> <p>24 bottom of the page states "negative goodwill". Do</p> <p>25 you see that?</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A. Yes.</p> <p>3       Q. Was negative goodwill basically profit?</p> <p>4       MR. HUME: Objection, vague and</p> <p>5       ambiguous.</p> <p>6       A. I suppose under UK accounting when you</p> <p>7       do an acquisition you have to work out the fair</p> <p>8       value of the assets and the fair value of the</p> <p>9       liabilities which you acquire, and the balance is</p> <p>10      goodwill, to make your acquisition balance sheet</p> <p>11      balance.</p> <p>12      Q. So is it the same as profit?</p> <p>13      A. It is not the same as profit.</p> <p>14      Q. It is just the difference between assets</p> <p>15      and liabilities?</p> <p>16      A. It is the difference between the assets</p> <p>17      and the liabilities.</p> <p>18      Q. And in this acquisition summary the</p> <p>19      value of the assets over the liabilities was</p> <p>20      \$3.7 billion?</p> <p>21      A. This document appears to be a working</p> <p>22      draft. I think if you read what it says it says</p> <p>23      it is the current summary produced in the middle</p> <p>24      of the night, and at that point it shows the sum</p> <p>25      of assets which have been included. I am not sure</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       if this was complete in terms of the assets or the</p> <p>3       liabilities included, but at that point in time it</p> <p>4       does show the sum of the assets is greater than</p> <p>5       the sum of the liabilities in terms of what was</p> <p>6       put on the schedule.</p> <p>7       Q. And the values that would appear under</p> <p>8       the value of the assets on page 3 of Exhibit 352A,</p> <p>9       where would those values have come from?</p> <p>10      A. You would really have to ask Gary</p> <p>11      precisely, but as we were I suppose standing back</p> <p>12      from this, we went into the Lehman building and</p> <p>13      Lehmans were providing us with some information.</p> <p>14      We had no access to their underlying accounting</p> <p>15      records or any other records, so we were getting</p> <p>16      fed bits of information from Lehmans.</p> <p>17      I think as I mentioned earlier we had obviously</p> <p>18      people like Mike Keegan and John Mahon reviewing areas like</p> <p>19      securities and the valuation of those securities. So as we</p> <p>20      were getting updates on any work which was going on this</p> <p>21      working document would have been updated for what those</p> <p>22      were.</p> <p>23      Q. And there is a valuation adjustment, do</p> <p>24      you see, at the top of the spreadsheet,</p> <p>25      \$3.5 billion. Do you see that?</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A. Yes.</p> <p>3       Q. Would that valuation adjustment have</p> <p>4       been arrived at through the process you talked</p> <p>5       about before, where the Barclays folks would have</p> <p>6       put a fair value adjustment?</p> <p>7       A. So what happened, there was an arm's</p> <p>8       length, a very arm's length, that is completely my</p> <p>9       recollection, negotiation between ourselves and</p> <p>10      Lehmans in terms of the assets we were taking on,</p> <p>11      the liabilities which we were going to take on and</p> <p>12      about the valuations of those.</p> <p>13      In terms of the assets, our experts went through,</p> <p>14      and I think in this level it possibly was down to a CUSIP by</p> <p>15      CUSIP level, but I think you should probably talk to them</p> <p>16      and get the precise details from them, went through the</p> <p>17      details of the portfolio together with Lehmans people to</p> <p>18      agree what the fair value for taking on that portfolio would</p> <p>19      be. I think the valuation adjustment, my understanding,</p> <p>20      came out of that negotiation. So it was not just what the</p> <p>21      Barclays people thought.</p> <p>22      My specific recollection is that there were some</p> <p>23      portfolios where we had a disagreement, that we thought the</p> <p>24      valuations were lower than Lehmans and we could not</p> <p>25      triangulate the difference, and therefore we agreed to</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       exclude those portfolios because we could not triangulate</p> <p>3       them. So where we had a valuation adjustment it was agreed</p> <p>4       through negotiation, is my understanding.</p> <p>5       Q. And then that negotiated value was</p> <p>6       listed in the total assets category as a value of</p> <p>7       the assets being acquired?</p> <p>8       A. Yes, so in terms of the agreement that</p> <p>9       would then have been the agreed value of those</p> <p>10      assets which were taken on under the contract.</p> <p>11      (Exhibit 353A marked for identification)</p> <p>12      Q. I have placed before you a one page</p> <p>13      document marked Exhibit 353A. Let me know when</p> <p>14      you are done looking at it.</p> <p>15      You will see this is a discussion between John</p> <p>16      Varley, the Group Chief Executive, and Chris Lucas about</p> <p>17      negative goodwill. Do you see that? Is it fair to say, if</p> <p>18      I read this correctly, Mr. Lucas is saying his current</p> <p>19      thinking, as of September 24, was negative goodwill was hard</p> <p>20      to exclude, given that it is both accounting profit and tier</p> <p>21      one for regulatory purposes. Do you see that?</p> <p>22      A. Yes.</p> <p>23      Q. Is it the case Mr. Lucas just has</p> <p>24      a different view of whether or not negative</p> <p>25      goodwill constitutes profit than you do?</p>

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1       **HIGHLY CONFIDENTIAL - PATRICK CLACKSON**  
2       A. What he is talking about here, just to  
3 be clear, he is saying it constitutes economic  
4 profit.  
5       Q. "Accounting profit" it says?  
6       A. Sorry, accounting profit. I think I am  
7 probably saying technically what it constitutes,  
8 in terms of I think what Chris is saying is  
9 technically it works out -- technically it is  
10 goodwill, but in terms of -- it rolls up into  
11 consolidated profit at a group level, so that  
12 would be correct, yes.  
13       (Exhibit 354A marked for identification)  
14       Q. I have placed before you a one page  
15 document marked Exhibit 354A. If you can take  
16 a moment to review it, let me know when you are  
17 done.  
18       A. Yes.  
19       Q. Did you play any role in the preparation  
20 of this document?  
21       A. I can't recall. I suspect some of the  
22 numbers or some of the numbers would obviously  
23 have come from me or my staff.  
24       Q. There is the question in the sub-line in  
25 this e-mail from Darren to you and Rich Ricci and

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1       **HIGHLY CONFIDENTIAL - PATRICK CLACKSON**  
2 liabilities by Barclays?  
3       A. Sorry, I don't quite understand the  
4 question.  
5       Q. Let me rephrase it. Is it your  
6 understanding that in connection with the  
7 Lehman/Barclays transaction, as contemplated early  
8 in the week and finally as consummated, that  
9 Barclays assumed certain liabilities?  
10       A. Yes, so as part of the transaction we  
11 assumed various liabilities, yes.  
12       Q. Would you consider those assumed  
13 liabilities to be part of the consideration paid  
14 by Barclays to Lehman?  
15       MR. HUME: Object to the question as  
16 calling for a legal conclusion.  
17       A. Yes, my understanding is what it said in  
18 the Asset Purchase Agreement, that that set out  
19 various assets which we were acquiring and various  
20 liabilities we assumed, and it set out  
21 consideration of 250 million for those other  
22 things. As Hamish says, in terms of legal points,  
23 I am not the person to ask.  
24       Q. I am not making a legal point. Just in  
25 terms of your understanding of the economics of

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1       **HIGHLY CONFIDENTIAL - PATRICK CLACKSON**  
2 Mr. Haworth. "Exec summary - is it 250 million or  
3 1.55 billion consideration?" Do you see that?  
4       A. Yes.  
5       Q. What was your understanding of the total  
6 consideration that was being paid by Barclays to  
7 Lehman under the Asset Purchase Agreement?  
8       A. We were paying -- my recollection is we  
9 were paying for three different things. We were  
10 paying 250 million for the business and we were  
11 paying for the buildings and we were paying for  
12 the data centers, and there were specifically  
13 itemized amounts for those other two areas.  
14       Q. And for the building and data centers is  
15 it your understanding that ultimately the amount  
16 that Barclays paid for those two items was based  
17 on appraised values for those two items?  
18       A. Yes, I think the final calculation of  
19 those was based on appraised values, less some  
20 deduction I think.  
21       Q. This set of bullet points doesn't  
22 discuss any consideration that was paid by  
23 Barclays in the form of assumed liabilities. What  
24 was your understanding early in the week  
25 of September 15 as to the nature of the assumed

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1       **HIGHLY CONFIDENTIAL - PATRICK CLACKSON**  
2 the deal, would you consider the liabilities  
3 assumed by Barclays to be part of the value paid  
4 by Barclays to Lehman?  
5       A. I think what I considered the deal was,  
6 what it said in the purchase agreement, that we  
7 were taking on various assets and assuming  
8 liabilities as set out in that agreement for a sum  
9 of 250 million.  
10       Q. Some or all of these bullet points make  
11 their way into a presentation to the board of  
12 Barclays. Is that your understanding? Do you  
13 know that?  
14       A. I know there were various presentations  
15 to the board. I don't know that directly though.  
16       Q. I will show you a board presentation  
17 document, but did you make any presentations to  
18 the board on around 15/16/17 September about the  
19 Lehman/Barclays transaction?  
20       A. I don't recall making any presentations  
21 myself to the board. It is possible I could have  
22 been in the room in New York when other people  
23 were talking to the board, but I can't precisely  
24 recall whether I was or was not.  
25       Q. But you recall that there was board

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2   approval sought specifically for the transaction?</p> <p>3       A. I do know there was board approval</p> <p>4   sought, yes.</p> <p>5       Q. I have placed before you, sir,</p> <p>6   a document marked Exhibit 342A, which was</p> <p>7   a document previously marked. If you can take</p> <p>8   a moment to review the cover e-mail and the</p> <p>9   attachment and let me know when you are done.</p> <p>10       A. I have looked at the document generally.</p> <p>11   I have not read it in detail.</p> <p>12       Q. Okay. There is a cover e-mail and</p> <p>13   a Powerpoint presentation. The cover e-mail,</p> <p>14   there is two e-mails, one from you to James</p> <p>15   Walker. Who was Mr. Walker?</p> <p>16       A. He was the CFO of Barclays Capital North</p> <p>17   America, so based in New York.</p> <p>18       Q. And you were forwarding a board deck</p> <p>19   that had been sent to you by Richard Haworth. Do</p> <p>20   you see that?</p> <p>21       A. Yes.</p> <p>22       Q. And if you turn to the board deck and</p> <p>23   page 2 of the deck you will see an executive</p> <p>24   summary there. Do you see that?</p> <p>25       A. Yes.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       Q. And that identifies some of the same</p> <p>3   points that we were discussing on one of the</p> <p>4   earlier exhibits we looked at, right?</p> <p>5       A. Right, page 2 looks quite similar to</p> <p>6   your Exhibit 354A.</p> <p>7       Q. In the top third of the page, page 2 of</p> <p>8   this exhibit, 342A, the third arrow begins: "We</p> <p>9   would offer 250 million..." Do you see that?</p> <p>10       A. Yes.</p> <p>11       Q. That arrow ends with the sentence:</p> <p>12       "The recognition of negative goodwill amounts</p> <p>13   to 3 billion pre tax (2 billion post tax)".</p> <p>14       Do you see that?</p> <p>15       A. I see that, yes.</p> <p>16       Q. Do you recall any discussion at this or</p> <p>17   any board meeting about the amount of the negative</p> <p>18   goodwill that would be recognized in the Lehman</p> <p>19   transaction?</p> <p>20       MR. HUME: Objection, lacks foundation.</p> <p>21       A. I don't recall any discussion at any</p> <p>22   board meeting. As I said I don't recall whether</p> <p>23   I attended it.</p> <p>24       Q. Flipping to page 5 of the Powerpoint,</p> <p>25   that is a slide that is titled: "Total assets in</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2   new transaction are 75 billion". Do you see that?</p> <p>3       A. Yes.</p> <p>4       Q. I just have a question about that</p> <p>5   number, that \$75 billion number and the number we</p> <p>6   were looking at in Exhibit 352A, which was the</p> <p>7   acquisition summary exhibit, if you have that</p> <p>8   before you, and the third page of that exhibit,</p> <p>9   352A, had an acquisition summary with total assets</p> <p>10   of 62.7, inventory assets of 60.5.</p> <p>11       If you look at the cover e-mails on both these</p> <p>12   documents they are within hours of each other. Do you have</p> <p>13   an explanation as to why there is that difference between</p> <p>14   the board deck and that Exhibit 352A?</p> <p>15       A. You say the documents were within hours</p> <p>16   of each other. This whole transaction was done in</p> <p>17   a very small number of hours. I think, as I said</p> <p>18   earlier, this looks to me like a working document,</p> <p>19   so numbers were changing minute by minute rather</p> <p>20   than hour by hour. So the fact that the two</p> <p>21   documents are different does not surprise me, and</p> <p>22   over that period there were many different</p> <p>23   documents produced with many different numbers and</p> <p>24   probably, as I am sure you know, the final deal</p> <p>25   and where it finally ended up, all of those</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2   numbers and all of those assumptions ended up</p> <p>3   being incorrect, so yes, there were many drafted</p> <p>4   documents.</p> <p>5       Q. The chart that appears on page 5 of the</p> <p>6   board deck, that is Exhibit 342A, do you have an</p> <p>7   understanding of what those columns in that chart</p> <p>8   mean, what that information is?</p> <p>9       A. My recollection, looking at page 5, is</p> <p>10   that this is trying to show I think -- I can't</p> <p>11   remember exactly what you called it but you called</p> <p>12   it Lehman one, so the third two columns would have</p> <p>13   been the items shown to the board in terms of the</p> <p>14   initial Lehman transaction. I don't know if they</p> <p>15   are precisely the same or not but that is my</p> <p>16   assumption, in trying to represent that.</p> <p>17       So as I mentioned earlier you had what was in the</p> <p>18   original transaction, there were various assets which were</p> <p>19   excluded from that original transaction, and this is then it</p> <p>20   looks like excluded, new transaction will be a balancing</p> <p>21   figure, and the new transaction will be one of the versions</p> <p>22   of the documents of the assets we thought we were acquiring.</p> <p>23       Q. Just so we have a clear record, the</p> <p>24   Lehman one transaction, that is the column titled</p> <p>25   "Long Island Starting Position". Is that correct?</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A. I think the Lehman one transaction would</p> <p>3       have been the Long Island starting position less</p> <p>4       the excluded original transaction.</p> <p>5       Q. Okay.</p> <p>6       A. But whether those are precisely the</p> <p>7       numbers, I don't know, but I think that is what</p> <p>8       this is trying to show.</p> <p>9       Q. And the next column over, which is</p> <p>10      "excluded new transaction" those are additional</p> <p>11      assets that are excluded from the Lehman assets?</p> <p>12      A. I think, as I said, that column looks to</p> <p>13      me like a balancing figure. We obviously knew</p> <p>14      what was included in Lehman two, in terms of the</p> <p>15      new transaction, that is just the balance you get</p> <p>16      from -- so that the schedule sums across, would be</p> <p>17      my assumption.</p> <p>18      Q. There is an item in the "new transaction</p> <p>19      included" column on the row that is titled</p> <p>20      "other", and it has an amount of 19.9 billion. Do</p> <p>21      you have any understanding as to what assets were</p> <p>22      included in that category?</p> <p>23      A. I can't recall.</p> <p>24      Q. Would the values shown in the new</p> <p>25      transaction included column be values that had</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       been adjusted, the fair value adjustments done by</p> <p>3       Barclays, or are these Lehman marks?</p> <p>4       A. I suppose, just going back to what</p> <p>5       I said earlier, we didn't do a unilateral</p> <p>6       adjustment to the marks, so in negotiation we</p> <p>7       agreed valuations. So we had an arm's length</p> <p>8       negotiation to get to the valuations. I don't</p> <p>9       know precisely what these numbers here represent.</p> <p>10      Q. Whether these are the negotiated marks</p> <p>11      or the original Lehman marks?</p> <p>12      A. I don't know.</p> <p>13      MR. TAMBE : Let's take a short break</p> <p>14      and then resume.</p> <p>15              (A short break).</p> <p>16      MR. TAMBE : On some of the documents we</p> <p>17      have looked at there is a reference to RWA. What</p> <p>18      is RWA?</p> <p>19      A. RWA is risk weighted assets. There is</p> <p>20      a measure by which bank's capital adequacy is</p> <p>21      calculated, so different assets are given</p> <p>22      different weightings depending on the risk of</p> <p>23      those assets. So I suppose, it is a very simple</p> <p>24      example, a private equity or a risky asset is</p> <p>25      given a very high rating, whereas a less risky</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       asset, like a Government bond, is given quite</p> <p>3       a low weighting. So it is a method to try and</p> <p>4       sort of equate the risk in assets to get</p> <p>5       a measure -- I suppose in the US you have</p> <p>6       a leverage ratio, but to try and produce a sort of</p> <p>7       equivalent amount of risk across different asset</p> <p>8       types.</p> <p>9       Q. Okay.</p> <p>10      A. Also in one of the exhibits, 342A in</p> <p>11      front of me, I can see the term "WRA", and the</p> <p>12      terms RWA and WRA, standing for weighted risk</p> <p>13      assets or risk weighted assets are the same thing.</p> <p>14      Q. Turning to page 2 of the deck,</p> <p>15      Exhibit 342A, and it is the second page of the</p> <p>16      deck which is the attachment, that is the</p> <p>17      executive summary, and near the top of the page we</p> <p>18      have those arrows. The second arrow reads:</p> <p>19      "We would acquire 75 billion of assets and</p> <p>20      liabilities. The business would include RWA of</p> <p>21      13.5 billion."</p> <p>22      Do you see that?</p> <p>23      A. Yes, I can see that.</p> <p>24      Q. Is that the risk weighted asset</p> <p>25      calculation, that \$13.5 billion number, that is</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       the risk weighted asset calculation of 75 billion</p> <p>3       of assets and liabilities?</p> <p>4       A. It is actually a bit more complicated</p> <p>5       than that, because in this case the assets and</p> <p>6       liabilities would be in a US broker dealer, and to</p> <p>7       calculate the -- so the RWA is the way the bank</p> <p>8       works out its capital. To calculate its</p> <p>9       consolidated capital, which is what a bank has to</p> <p>10      do, it has to add up the capital in its</p> <p>11      subsidiaries, and that RWA would be computed by</p> <p>12      what the broker dealer capital charges for those</p> <p>13      assets and liabilities would be, and then</p> <p>14      converting that from the broker deal methodology</p> <p>15      to a sort of bank equivalent, but those would then</p> <p>16      be on a consolidated basis what the RWA equivalent</p> <p>17      would be.</p> <p>18      Q. I think my question may have been</p> <p>19      narrower. The line that reads: "The business will</p> <p>20      include RWA of 13.5 billion", that is</p> <p>21      a calculation or a number that relates to the</p> <p>22      business being acquired. Correct?</p> <p>23      A. Yes, that is a calculation relating to</p> <p>24      the 75 billion.</p> <p>25      Q. There was a reference in one of the</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       other e-mails we looked at to tier one regulatory</p> <p>3       capital. Do you remember the phrase was used,</p> <p>4       "tier one regulatory capital"?</p> <p>5       A. Yes.</p> <p>6       Q. Are the calculations for tier one</p> <p>7       regulatory capital based on RWA or based on fair</p> <p>8       value of the assets and liabilities?</p> <p>9       A. The calculation of tier one capital are</p> <p>10      quite complicated and have quite a lot of inputs</p> <p>11      into them. RWA's are one of the inputs. The fair</p> <p>12      value of assets and liabilities does feed into the</p> <p>13      RWA calculation and also feeds into the reported</p> <p>14      profit calculation, which also feeds into the tier</p> <p>15      one calculation. So it is a very complicated</p> <p>16      framework, but both of those feed into it.</p> <p>17      Q. Do you recall being party to any</p> <p>18      discussions in which the amount of negative</p> <p>19      goodwill generated in this transaction was being</p> <p>20      considered in light of the regulatory capital</p> <p>21      needs for the businesses being acquired?</p> <p>22      A. I suppose standing back from my -- part</p> <p>23      of my role in looking at this transaction was to</p> <p>24      make sure that at the time when the world was</p> <p>25      collapsing and capital was a very scarce resource</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       that overall the impact of this transaction was</p> <p>3       not going to be negative to the capital of</p> <p>4       Barclays as a group, and therefore one of the many</p> <p>5       metrics in terms of looking at the transaction was</p> <p>6       the effect of the transaction on the regulatory</p> <p>7       capital of the group as a whole, and obviously the</p> <p>8       effects of the assets you acquire, the effects are</p> <p>9       any capital deductions which might be part of the</p> <p>10      transaction, and if you had positive goodwill it</p> <p>11      would be a negative to capital and if you had</p> <p>12      negative goodwill it would be a positive to</p> <p>13      capital.</p> <p>14      Q. So to the extent you had negative</p> <p>15      goodwill it would help you meet your regulatory</p> <p>16      capital requirements?</p> <p>17      A. So taking all the business, all these</p> <p>18      different factors would affect the capital, yes.</p> <p>19      The negative goodwill would be positive any assets</p> <p>20      you acquire would be negative and any capital</p> <p>21      deductions acquired would be highly negative.</p> <p>22      Q. I appreciate the fuller answer, but just</p> <p>23      focusing on the negative goodwill, if I understand</p> <p>24      your answer correctly, having the negative</p> <p>25      goodwill helps you meet your regulatory capital</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       requirements?</p> <p>3       A. I suppose I am giving you a full answer</p> <p>4       because I think the transaction -- we were looking</p> <p>5       at the transaction as one transaction, i.e. do we</p> <p>6       buy the business or not buy the business.</p> <p>7       Obviously, the transaction came as a whole and</p> <p>8       therefore we were looking at the impact on a whole</p> <p>9       on capital, which is why I think it is</p> <p>10      inappropriate just to pull one part out.</p> <p>11      Q. Okay. All I am saying is, all other</p> <p>12      things being equal, the more negative goodwill you</p> <p>13      had, the more regulatory capital you had.</p> <p>14      Correct?</p> <p>15      A. I think I have said, if you had negative</p> <p>16      goodwill it is positive to capital.</p> <p>17      Q. Was it contemplated that Barclays would</p> <p>18      raise capital to satisfy the regulatory capital</p> <p>19      needs of this acquisition?</p> <p>20      A. I was not directly involved but I know</p> <p>21      there was some talk and there was some reference</p> <p>22      in these documents to Barclays doing some</p> <p>23      transaction with Sumitomi to raise some additional</p> <p>24      capital.</p> <p>25      Q. In fact, at the bottom of the executive</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       summary there is a request for board approval to</p> <p>3       approve the transaction and to issue 612 million</p> <p>4       Barclays shares. Do you see that?</p> <p>5       A. Yes.</p> <p>6       Q. Was it your understanding that these</p> <p>7       shares were being raised in order to help Barclays</p> <p>8       meet the regulatory capital requirements of its</p> <p>9       business or for some other purposes?</p> <p>10      A. I suppose my understanding was that in</p> <p>11      total Barclays was looking at doing this</p> <p>12      capital -- doing this transaction in its total</p> <p>13      capital needs and, yes, I don't know what the</p> <p>14      segregation of the different pieces was.</p> <p>15      Q. Going back to our negative goodwill</p> <p>16      discussion, the less negative goodwill you had in</p> <p>17      this transaction, the more need there would be for</p> <p>18      Barclays to obtain regulatory capital from other</p> <p>19      sources. Correct?</p> <p>20      A. I suppose, standing back from the</p> <p>21      transaction, if we took on different assets, that</p> <p>22      would consume more capital. If we had more</p> <p>23      negative goodwill it would produce capital. So</p> <p>24      all of those different factors of the transaction</p> <p>25      would affect, as I said before, the capital</p>



<p style="text-align: right;">Page 58</p> <p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 ratios, and I think, as I mentioned earlier, in</p> <p>3 the initial transaction one of the reasons why we</p> <p>4 didn't look at taking on the private equity</p> <p>5 business was not just the valuations but also the</p> <p>6 capital impact of taking on that private equity</p> <p>7 business would have been very onerous. So capital</p> <p>8 at this time, when capital was very scarce in the</p> <p>9 world was clearly a consideration and an important</p> <p>10 consideration.</p> <p>11       Q. And at least one of your aims was to</p> <p>12 reduce the need to have to go out and raise fresh</p> <p>13 capital in this environment, was that fair?</p> <p>14       A. In terms of raising capital and going at</p> <p>15 sterling and raising capital, that was not really</p> <p>16 something which was under my remit.</p> <p>17       Q. Do you know one way or the other what</p> <p>18 Barclays' view was or appetite was for raising new</p> <p>19 capital in this environment?</p> <p>20       A. I think it is really more something you</p> <p>21 should talk to people like John Varley, who you</p> <p>22 talked to yesterday, or Bob Diamond about, rather</p> <p>23 than myself, but as I said it was a very difficult</p> <p>24 market environment, as we know, and capital was</p> <p>25 very scarce and raising capital was very</p>	<p style="text-align: right;">Page 59</p> <p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 difficult.</p> <p>3       (Exhibit 355A marked for identification)</p> <p>4       Q. I have placed before you a 2-page</p> <p>5 document marked Exhibit 355A. Take a moment to</p> <p>6 review it. Let me know when you are done. Have</p> <p>7 you had a chance to review it?</p> <p>8       A. Yes.</p> <p>9       Q. At the bottom of page 1, carrying over</p> <p>10 on to page 2, is an e-mail from Bill Castell to</p> <p>11 various people, and you are cc'd on that. Do you</p> <p>12 see that?</p> <p>13       A. Yes.</p> <p>14       Q. There is a calculation of sorts set out</p> <p>15 at the bottom of page 1 over on to page 2,</p> <p>16 yielding a negative goodwill number of 3 billion</p> <p>17 pre tax. Do you see that?</p> <p>18       A. Sorry, precisely which calculation are</p> <p>19 you referring to?</p> <p>20       Q. The calculation which begins with the</p> <p>21 heading "FV inventory". I assume that is fair</p> <p>22 value inventory, is that right?</p> <p>23       A. I think that is probably what it is.</p> <p>24       Q. It carries on through various other</p> <p>25 calculations but the last line is "Negative</p>
<p style="text-align: right;">Page 60</p> <p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 goodwill 3 billion". Do you see that?</p> <p>3       A. Yes.</p> <p>4       Q. Do you have an understanding as to what</p> <p>5 that calculation is, starting with "fair value</p> <p>6 inventory" all the way down?</p> <p>7       A. I don't recall specifically this e-mail</p> <p>8 but it would appear to be Bill Castell, who works</p> <p>9 in the corporate development group of Barclays,</p> <p>10 trying to calculate his own acquisition balance</p> <p>11 sheet.</p> <p>12       Q. You will see the numbers are somewhat</p> <p>13 different than the numbers we saw in the board</p> <p>14 presentation, Exhibit 342, correct?</p> <p>15       A. As I said, I think the numbers were</p> <p>16 changing minute by minute so I wouldn't be</p> <p>17 surprised if the numbers were different.</p> <p>18       Q. At the end of his e-mail he has a note</p> <p>19 about the board deck and the board deck's</p> <p>20 reference to \$3 billion of negative equity. Do</p> <p>21 you see that?</p> <p>22       MR. HUME: Are you on the first page?</p> <p>23       MR. TAMBE: On the second page.</p> <p>24       A. Yes.</p> <p>25       Q. Was there a question or concern about</p>	<p style="text-align: right;">Page 61</p> <p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 whether the calculation of negative goodwill had</p> <p>3 been done correctly in the board presentation?</p> <p>4       A. I couldn't answer specifically on what</p> <p>5 Bill is referring to here, but there was -- I mean</p> <p>6 this transaction, as I said, numbers were changing</p> <p>7 all the time. It was being done overnight. There</p> <p>8 were people in London and New York. There was</p> <p>9 a lot of confusion and misunderstanding about</p> <p>10 precisely what was what and what did it mean, and</p> <p>11 therefore there was a lot of confusion and there</p> <p>12 will be a lot of misunderstandings during that</p> <p>13 period. So I would not be surprised if this</p> <p>14 reflected some confusion and misunderstanding.</p> <p>15       Q. To your recollection, was there a target</p> <p>16 negative goodwill number that Barclays were</p> <p>17 shooting for as circumstances changed and the deal</p> <p>18 evolved?</p> <p>19       MR. HUME: Objection, vague and</p> <p>20 ambiguous.</p> <p>21       A. Just to be clear, my recollection, we</p> <p>22 went in on the Monday, my job in terms of the</p> <p>23 transaction and trying to negotiate a transaction</p> <p>24 was trying to negotiate something which protected</p> <p>25 Barclays from the huge amount of uncertainty which</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       was in the environment and to make sure that the</p> <p>3       business we were taking on did not have a negative</p> <p>4       impact on Barclays.</p> <p>5       I don't recall having any target. As we</p> <p>6       were going through we worked out some numbers.</p> <p>7       I remember those numbers changing as we got</p> <p>8       different data coming through, and I remember</p> <p>9       those numbers continuing to change at that early</p> <p>10      time in the deal and then continuing to change</p> <p>11      afterwards for a long period of time as we tried</p> <p>12      to work out precisely what we had acquired and</p> <p>13      what liabilities we had taken on.</p> <p>14      <b>Q. At any time during that week</b></p> <p>15      <b>of September 15, do you recall Barclays taking any</b></p> <p>16      <b>steps to ensure that the negative goodwill</b></p> <p>17      <b>generated by the transaction would equal or exceed</b></p> <p>18      <b>\$3 billion?</b></p> <p>19      A. I suppose, going back to what I said, we</p> <p>20      initially negotiated a transaction where we took</p> <p>21      on various -- we acquired various assets and took</p> <p>22      on various liabilities. As we went through the</p> <p>23      week and the transaction changed, at all times we</p> <p>24      really tried to make sure that we were continuing</p> <p>25      to protect Barclays. So I suppose what happened</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       during that week, the difference between Lehman</p> <p>3       two and Lehman three, which I think I said before</p> <p>4       we went from a long position and a short position</p> <p>5       which largely offset each other to suddenly having</p> <p>6       a very big long position, at a time of extreme</p> <p>7       market volatility and at a time -- and a long</p> <p>8       position where we had not done the due diligence,</p> <p>9       we had not been able to do like the detailed</p> <p>10      review of the assets we were taking on.</p> <p>11      The one thing we knew about the assets we were</p> <p>12      taking on was the Fed was trying to get out of those assets,</p> <p>13      the Fed did not want to hold them and wanted us to take</p> <p>14      them, but we had not had time to really say what were those</p> <p>15      assets worth and what was a fair value of them.</p> <p>16      So I was aware at that point as the transaction</p> <p>17      changed that we did try and take on further assets to</p> <p>18      protect ourselves against the huge uncertainty and risks</p> <p>19      which had suddenly moved into the transaction, which had not</p> <p>20      existed in the original transaction.</p> <p>21      <b>Q. And these further assets that you tried</b></p> <p>22      <b>to take on, did you have a total value size or</b></p> <p>23      <b>a target size in mind as to how much more you</b></p> <p>24      <b>needed in terms of further assets for this</b></p> <p>25      <b>protection?</b></p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A. I suppose what we knew is that we had</p> <p>3       taken on some potential liabilities, so we knew at</p> <p>4       a minimum we had taken on potential liabilities,</p> <p>5       both of staff and suppliers. A lot of the assets</p> <p>6       we thought we had been acquiring looked like they</p> <p>7       were encumbered and we were no longer going to</p> <p>8       acquire. We knew we were taking on some</p> <p>9       liabilities. So I suppose as a minimum, in my</p> <p>10      mind, to protect Barclays we needed to ensure that</p> <p>11      we had sufficient assets to cover the liabilities</p> <p>12      which we were assuming.</p> <p>13      <b>Q. And these further assets that Barclays</b></p> <p>14      <b>tried to take on, and generally by asset category</b></p> <p>15      <b>or description can you give us a sense of what</b></p> <p>16      <b>those further assets were?</b></p> <p>17      A. I think as I said I flew back to London</p> <p>18      on Wednesday night, and I think a lot of the</p> <p>19      changes between these transactions were happening</p> <p>20      during the week, where we found a lot of the</p> <p>21      assets we contracted to buy were no longer or were</p> <p>22      encumbered, and so it was looking like the deal</p> <p>23      was all falling apart.</p> <p>24      In terms of the detail of the assets, I was quite</p> <p>25      removed because I was sitting in London. I was on a few</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       calls. I remember one call, I think it was probably on the</p> <p>3       Thursday night, where I had to be shaken awake by my wife in</p> <p>4       the middle of the night to go on to a call, where there was</p> <p>5       some talk about assets, but I was not very -- you know, I</p> <p>6       didn't have -- Lehman's were the only people that had the</p> <p>7       information on the assets. I didn't have any information or</p> <p>8       understanding, apart from it suddenly looked like we had</p> <p>9       a deal where we were taking on or assuming some large</p> <p>10      potential liabilities and potentially would be realizing</p> <p>11      I suppose a large positive goodwill at that point.</p> <p>12      <b>Q. And this effort to try and find or try</b></p> <p>13      <b>and identify further assets, did that effort</b></p> <p>14      <b>continue into the weekend of the 20th, 21st and</b></p> <p>15      <b>thereafter?</b></p> <p>16      A. I can't recall the precise detail around</p> <p>17      all the timings. As I said, I was not on the</p> <p>18      ground so I am not the right person to answer</p> <p>19      that.</p> <p>20      <b>Q. In trying to identify the further assets</b></p> <p>21      <b>that were to be acquired, were there any</b></p> <p>22      <b>limitations in terms of whether they were part of</b></p> <p>23      <b>the deal or not, whether they were included in the</b></p> <p>24      <b>Asset Purchase Agreement or the clarification</b></p> <p>25      <b>letter?</b></p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A. Sorry, I don't know if you can repeat</p> <p>3       the question. It is not very clear what you said.</p> <p>4       Q. You described Lehman two as</p> <p>5       a transaction where you had identified long</p> <p>6       positions and short positions that were going to</p> <p>7       be acquired. Correct?</p> <p>8       A. Yes.</p> <p>9       Q. Then things change, the Fed makes the</p> <p>10      demand it does, you get collateral that you have</p> <p>11      described as very different from the collateral</p> <p>12      that you had agreed to purchase in the Lehman two</p> <p>13      transaction, and you perceive greater risk.</p> <p>14      Correct?</p> <p>15      A. Yes. Not just perceive greater risk;</p> <p>16      there was a significantly different risk profile.</p> <p>17      I suppose --</p> <p>18      Q. But here is where I am getting too --</p> <p>19      MR. HUME: Let him answer.</p> <p>20      MR. TAMBE: Let me finish my question.</p> <p>21      I was in the middle of responding to your earlier</p> <p>22      point as to where we are going with this, and then</p> <p>23      you identify further assets. In identifying those</p> <p>24      further assets, did you believe there were any</p> <p>25      limitations as to what assets could be identified</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       and transferred to Barclays, any limitations</p> <p>3       imposed by either the Asset Purchase Agreement or</p> <p>4       the clarification letter.</p> <p>5       A. It sounds quite a sort of technical</p> <p>6       legal question to me. We had obviously done</p> <p>7       a transaction with Lehman Brothers Inc to acquire</p> <p>8       assets from Lehman Brothers Inc, who were party to</p> <p>9       the transaction. So I suppose in my mind they</p> <p>10      only had the power obviously to agree to transfer</p> <p>11      any assets which were owned by Lehman Brothers</p> <p>12      Inc. They would not have the power to transfer</p> <p>13      any other assets. But obviously if assets were</p> <p>14      within the original agreement those assets would</p> <p>15      already have been covered by the original</p> <p>16      agreement. The issue was that those assets, under</p> <p>17      the original agreement, Lehman Brothers Inc did</p> <p>18      not have the power to transfer them.</p> <p>19      Q. Did you have an understanding that</p> <p>20      assets that were not included in the original</p> <p>21      agreement would be included by virtue of the</p> <p>22      clarification letter?</p> <p>23      A. Yes. So that was my understanding, that</p> <p>24      the clarification letter -- yes, the clarification</p> <p>25      letter specifically brought in various assets to</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       make clear what assets were part of that</p> <p>3       agreement.</p> <p>4       I just wanted to say, back to when you interrupted</p> <p>5       me --</p> <p>6       Q. I am sorry, I wanted to get that</p> <p>7       question down but I am done. Go ahead.</p> <p>8       A. The difference between buying a long and</p> <p>9       short portfolio and just a long portfolio, there</p> <p>10      is one difference, which is we didn't know the</p> <p>11      assets, but at that time of market volatility,</p> <p>12      which was horrific during that time, and still</p> <p>13      today, if we look at the last two years, they were</p> <p>14      the most volatile days around that time, if you</p> <p>15      had a long and short position there was some</p> <p>16      natural offset, the market went down, you would</p> <p>17      lose on your long positions and gain on your short</p> <p>18      position. The market went up, vice versa.</p> <p>19      Suddenly the risk involved with the portfolio we</p> <p>20      were taking on was very different, because we just had</p> <p>21      a long position, and therefore we were exposed. Obviously,</p> <p>22      if the market fell, which felt like that was what was</p> <p>23      happening in the world, and the assets we had taken on,</p> <p>24      I suppose not only had we not done the due diligence but</p> <p>25      most of them were not liquid assets or assets which were</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       easily hedged or managed, so we took on a very large</p> <p>3       portfolio at a time when it was very difficult to hedge</p> <p>4       that, and probably also very difficult to sell that, because</p> <p>5       people would not want to buy those assets at that time.</p> <p>6       So it is not a small change in terms of the risk</p> <p>7       profile we were taking on. It was a completely, I suppose,</p> <p>8       in retrospect, I think if the transaction had been that</p> <p>9       Lehman three transaction initially, I am not sure if we</p> <p>10      would have done it, because it was almost unquantifiable</p> <p>11      risk we were taking on from that transaction.</p> <p>12      Q. Given how horrific conditions were that</p> <p>13      week, why do the transaction at all? Why take on</p> <p>14      all this risk?</p> <p>15      A. There were lots of -- there were</p> <p>16      conversations later in that week about, you know,</p> <p>17      should we do it and was it really a sensible thing</p> <p>18      to do. Clearly the reason we were doing the</p> <p>19      transaction in the first place was because of the</p> <p>20      strategic rationale of buying the business going</p> <p>21      forward, but the risk around the transaction was</p> <p>22      very high. But also we had people like the Fed,</p> <p>23      as I said earlier, who were pushing us very hard</p> <p>24      to take on those positions, and that was an</p> <p>25      element. We got into quite a difficult position</p>

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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       to try and get out of that as well.</p> <p>3       Q. But you did take steps to address or</p> <p>4       mitigate the risk you were facing, correct?</p> <p>5       A. Yes.</p> <p>6       Q. And that included identifying the assets</p> <p>7       that you wished to purchase and the assets that</p> <p>8       you wished to exclude, correct?</p> <p>9       MR. HUME: Objection, vague and</p> <p>10      ambiguous.</p> <p>11      A. Yes, sorry, you are right, I do not</p> <p>12      understand the question.</p> <p>13      Q. In terms of addressing or mitigating the</p> <p>14      risk of the transaction, you took various</p> <p>15      different steps to do that, correct?</p> <p>16      A. We had done initially -- going back to</p> <p>17      the Monday Lehman two transaction, as we said,</p> <p>18      where we had not agreed to a price on the assets,</p> <p>19      we had excluded those, and we had excluded assets</p> <p>20      such as OTC contracts, where we thought there was</p> <p>21      unquantifiable risk around them. Later on in the</p> <p>22      week, and again I was not in New York so I was one</p> <p>23      step removed, I think it was much harder for us</p> <p>24      because we actually, more or less, we had the Fed</p> <p>25      saying that: "We want you to take on these</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       assets", and I am not sure if we had any ability</p> <p>3       to exclude anything from that.</p> <p>4       Q. So what steps, if any, did you take</p> <p>5       later on in the week to try and mitigate the risk</p> <p>6       of the assets that the Fed was asking you to take</p> <p>7       on?</p> <p>8       A. I am not really the person to know that.</p> <p>9       Q. Would the identification of further</p> <p>10      assets that we talked about be part of that?</p> <p>11      A. Yes, I suppose, apart from what we</p> <p>12      discussed earlier, that we knew we were taking on</p> <p>13      various liabilities, we knew we were taking on</p> <p>14      these very open-ended liabilities with these --</p> <p>15      well, we were paying cash. I can't remember</p> <p>16      precisely what it was but about \$45 billion for</p> <p>17      some assets of uncertain value in a very risky</p> <p>18      market. So to cover all of those risks we then</p> <p>19      did look at other assets we could take on, and</p> <p>20      again we negotiated that, which I suppose from the</p> <p>21      Barclays side seemed completely the appropriate</p> <p>22      thing to do in terms of a fair contract.</p> <p>23      (Exhibit 356A marked for identification)</p> <p>24      Q. I have placed before you a one page</p> <p>25      document marked Exhibit 356A. Would you take</p>
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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       a moment to review it and please let me know when</p> <p>3       you are done.</p> <p>4       A. Yes.</p> <p>5       Q. The subject of the e-mail in Exhibit</p> <p>6       356A is "Potential problem". Do you see that?</p> <p>7       A. Yes.</p> <p>8       Q. In fact, the e-mail lists more than</p> <p>9       a problem, it lists several potential problems.</p> <p>10      Do you see that?</p> <p>11      A. Yes, I can see it says "couple of</p> <p>12      problems" further down.</p> <p>13      Q. These e-mails are dated</p> <p>14      Wednesday September 17. Do you see that?</p> <p>15      A. Yes. The only thing I am not quite</p> <p>16      clear on is if it is London or New York time.</p> <p>17      Q. Okay. If you look at the bottom e-mail</p> <p>18      from John Mahon to Mike Keegan and others, there</p> <p>19      is four bullet points that appear at the bottom.</p> <p>20      Do you recall whether that exercise of those four</p> <p>21      bullet points were ever executed on?</p> <p>22      A. I don't know.</p> <p>23      Q. Do you recall any discussions that you</p> <p>24      were involved in upon learning about the couple of</p> <p>25      problems identified in this e-mail as to ways to</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       rectify those problems?</p> <p>3       MR. HUME: Objection to the form, vague</p> <p>4       and ambiguous, compound.</p> <p>5       A. I suppose these were in my recollection</p> <p>6       some of the problems which, as we discussed</p> <p>7       earlier, meant that the assets which we had</p> <p>8       acquired and liabilities, some of the trading</p> <p>9       liabilities we thought we had took on no longer</p> <p>10      appeared to be in LBI's power to deliver to us.</p> <p>11      So these were some of the changes which happened</p> <p>12      in the week.</p> <p>13      I mean, just sort of standing back a little bit</p> <p>14      from this, I think we were probably slightly naive on Monday</p> <p>15      when we did the transaction, thinking that we would be able</p> <p>16      to buy -- you know, we were looking at I suppose a trade day</p> <p>17      balance sheet and going through all those assets on the</p> <p>18      books of the broker dealer thinking we could buy those. I</p> <p>19      think we just underestimated the complexity of the</p> <p>20      bankruptcy of the Lehman group happening all around and the</p> <p>21      effect that would have on third parties. So yes, these are</p> <p>22      just some of the many problems which happened during that</p> <p>23      week.</p> <p>24      (Exhibit 357A marked for identification)</p> <p>25      Q. I have handed you a one page document</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       marked Exhibit 357A. Take a moment to review it,</p> <p>3       let me know when you are done.</p> <p>4       A. Yes.</p> <p>5       Q. Is this another example of Barclays</p> <p>6       realizing that some of the assets that it had</p> <p>7       wished to purchase in Lehman two were in fact not</p> <p>8       available to be purchased as the week wore on?</p> <p>9       A. Yes, I suppose as I said we had looked</p> <p>10      at a series of assets on the balance sheet of LBI</p> <p>11      which we have been through. I don't know</p> <p>12      specifically about this case but it appears to be</p> <p>13      this is another case where those assets which were</p> <p>14      on the balance sheet of LBI, LBI did not have</p> <p>15      entitlement to those assets to transfer to us,</p> <p>16      though I can't respond specifically to this case.</p> <p>17      Q. There is an e-mail from Stephen King.</p> <p>18      Who was Stephen King?</p> <p>19      A. Stephen King was or is a trader in our</p> <p>20      New York office. He was working together with</p> <p>21      John Mahon and Mike Keegan in terms of valuing</p> <p>22      assets. He is an ABS trader, and so his</p> <p>23      particular expertise is asset backed securities,</p> <p>24      and so he was involved in looking at the asset</p> <p>25      backed securities positions.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       Q. If you go back to Exhibit 352A, the</p> <p>3       acquisition summary. That is the 3-page.</p> <p>4       A. Okay.</p> <p>5       Q. On the covering e-mail and in the</p> <p>6       attached spreadsheet there is a bonus accrual</p> <p>7       number of a negative \$1.3 billion. Do you see</p> <p>8       that?</p> <p>9       A. Yes.</p> <p>10      Q. Do you have any understanding where that</p> <p>11      number had come from? This is on 16 September.</p> <p>12      A. I think, and you know I can't recall</p> <p>13      precisely, but my recollection is that as we were</p> <p>14      doing this work there were some people from our HR</p> <p>15      function who were trying to segment the population</p> <p>16      of people we were taking on, and were trying to</p> <p>17      estimate the bonus numbers, and I think it was</p> <p>18      a number which we got from them. I can't remember</p> <p>19      if it came to me or came to someone else. So it</p> <p>20      was an early estimate from our HR people. Yes, it</p> <p>21      was a provisional estimate we had at that time. I</p> <p>22      think you will find during that week that number</p> <p>23      changes as well.</p> <p>24      Q. In fact, what you find during that week</p> <p>25      is the number that you ascribed to bonus accrual,</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       as the week wears on, is a 2 billion-dollar</p> <p>3       number. Correct?</p> <p>4       A. The number which Lehman's produced, there</p> <p>5       were various versions, but their proforma balance</p> <p>6       sheets, and they produced a balance sheet which</p> <p>7       had a 2 billion-dollar number for comp accrual.</p> <p>8       At that time my understanding of that number for</p> <p>9       comp accrual was that that would cover us for all</p> <p>10      compensation costs, which may be costs which were</p> <p>11      costs on day one in terms of taking on the</p> <p>12      business and, ratcheting back, we were taking on</p> <p>13      about 10,000 people. In the middle of the night I</p> <p>14      had the conversation about some of those people we</p> <p>15      knew would be duplicating with functions we had,</p> <p>16      so we knew we were not going to continue to employ</p> <p>17      all 10,000 people. Therefore we knew that we</p> <p>18      would have to -- if we did take on those people we</p> <p>19      would have to sever a number of those people. So</p> <p>20      we were taking on potentially -- we didn't know</p> <p>21      what it was, an unknown severance liability.</p> <p>22      Some of that severance cost, and again I was not</p> <p>23      sure how that would be accounted for, whether that would be</p> <p>24      accounted for as a day one cost in terms of the acquisition</p> <p>25      balance sheet, which would be reflected in the acquisition</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       balance sheet or was ongoing running costs of the business,</p> <p>3       and I think my assumption at this time was that it would be</p> <p>4       taken as ongoing running costs of the business.</p> <p>5       The 2 billion number which appeared in the</p> <p>6       documents, though, was a number which I think was produced</p> <p>7       by Lehman's. I know it was not produced by us anyway.</p> <p>8       Q. I have handed you a document that was</p> <p>9       previously marked as Exhibit 285B. If you could</p> <p>10      take a moment to review it and let me know when</p> <p>11      you are done.</p> <p>12      A. Yes.</p> <p>13      Q. You will see that this is an exchange of</p> <p>14      e-mails between yourself and Michael Evans and</p> <p>15      Rich Ricci. Do you see that?</p> <p>16      A. Yes.</p> <p>17      Q. In your e-mail you state to Mr. Evans</p> <p>18      and Mr. Ricci:</p> <p>19      "I was relying on you guys telling me</p> <p>20      I needed 1.35 billion, which gave me 650 million of the</p> <p>21      goodwill but the para below says we have to pay it to</p> <p>22      them/can't use."</p> <p>23      Do you see that?</p> <p>24      A. Yes.</p> <p>25      Q. Where had you gotten the 1.35 billion</p>

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<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 number from?</p> <p>3 A. I think, as I said earlier, the numbers</p> <p>4 I had, the sort of working estimates I was getting</p> <p>5 from HR, and they were changing, so you can see in</p> <p>6 this case 1.35 is different from the 1.3 billion</p> <p>7 you referred me to earlier, so those were the</p> <p>8 estimates I was getting from HR in terms of the</p> <p>9 bonus accrual.</p> <p>10 As I said, my understanding of the document, there</p> <p>11 was a total 2 billion compensation accrual or provision,</p> <p>12 which my understanding was would cover acquisition amounts</p> <p>13 and other costs such as severance. But in terms of day one,</p> <p>14 as I said, my understanding at that time, which was not</p> <p>15 correct, was that I wouldn't have to accrue for some of that</p> <p>16 severance. So my estimate was that on day one in my UK --</p> <p>17 not my UK, my IFRS balance sheet, I would have 650 million</p> <p>18 goodwill, as said here.</p> <p>19 Now, when I saw the agreement, so I think this</p> <p>20 must be the first time I saw this clause in the agreement,</p> <p>21 it appeared to me to be more definitive than I had been led</p> <p>22 to understand earlier. Hence my e-mail. Clearly, I am not</p> <p>23 a lawyer. It was a layman's reading of this.</p> <p>24 Q. I am trying to get a better</p> <p>25 understanding of how the 2 billion-dollar number,</p>	<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 the \$1.35 billion number and the</p> <p>3 650 million-dollar number for goodwill relate to</p> <p>4 one another. Was the \$650 million of goodwill</p> <p>5 simply the difference between the 2 billion versus</p> <p>6 the 1.35 that you had at your accrual estimate?</p> <p>7 Is that what it was?</p> <p>8 MR. HUME: Objection, vague and</p> <p>9 ambiguous.</p> <p>10 A. I suppose going back to -- we were</p> <p>11 taking on a business and we were taking on various</p> <p>12 liabilities. What I said, let me go back to that</p> <p>13 again, is some of those liabilities were bonus</p> <p>14 liabilities, my understanding, some were severance</p> <p>15 liabilities, and therefore I suppose my</p> <p>16 expectation was I was going to have taken on those</p> <p>17 sort of liabilities, but some of those liabilities</p> <p>18 would appear in my opening balance sheet and some</p> <p>19 of those liabilities would appear throughout the</p> <p>20 period. Therefore, my expectation when I wrote</p> <p>21 this was my opening balance sheet was 650 million;</p> <p>22 obviously, the offset would be -- my profits for</p> <p>23 the period would be 650 million, wrong.</p> <p>24 Q. Sorry, are you using the word "wrong"?</p> <p>25 A. I am saying my earlier estimates, which</p>
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<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 are based on the data I got and my understanding</p> <p>3 would have been incorrect.</p> <p>4 Q. And the goodwill you are referring to</p> <p>5 here, I hope I am not confused on this, is it</p> <p>6 positive goodwill or negative goodwill?</p> <p>7 A. I suppose going back to simple</p> <p>8 accounting, you sum up the assets and the</p> <p>9 liabilities and the difference between those is</p> <p>10 a goodwill balance. Numerically, what I was</p> <p>11 saying here is if on my opening balance sheet I</p> <p>12 was going to have to show a higher liability on my</p> <p>13 opening balance sheet, it would reduce the amount</p> <p>14 of negative goodwill in my IFRS, you know,</p> <p>15 estimates.</p> <p>16 Q. And the way you were as lay person</p> <p>17 reading this provision of the agreement, you were</p> <p>18 reading it as requiring you to show the higher</p> <p>19 2 billion dollar number in your liabilities in</p> <p>20 your opening balance sheet?</p> <p>21 A. Actually, I don't think this agreement</p> <p>22 necessarily pertains to my IFRS accounting, but in</p> <p>23 terms it to me felt more definitive in the wording</p> <p>24 than I understood the wording was, than</p> <p>25 I understood from conversations. I obviously had</p>	<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 not seen this wording before, which is why I said</p> <p>3 it appeared to be a problem.</p> <p>4 I suppose I should say one other thing about this,</p> <p>5 to be clear, which was this was all based on working drafts.</p> <p>6 As we got new numbers and things and I suppose, just</p> <p>7 ratcheting back, part of the whole uncertainty of this deal,</p> <p>8 we had taken on some assets, we had taken on some</p> <p>9 liabilities. We were still trying to calculate what those</p> <p>10 assets and liabilities were as we went through this week.</p> <p>11 Q. I have handed you a document that was</p> <p>12 previously marked as Exhibit 286B. If you could</p> <p>13 take a moment to review it. It is the same bottom</p> <p>14 e-mail that we were just looking at on 285B but it</p> <p>15 has a different response at the top. This is one</p> <p>16 from Michael Evans to you in 286B. Let me know</p> <p>17 when you are done looking at that.</p> <p>18 A. I have reviewed it.</p> <p>19 Q. In Michael's e-mail to you, who is</p> <p>20 Michael Evans?</p> <p>21 A. Michael Evans is the head of human</p> <p>22 resources for Barclays Capital.</p> <p>23 Q. And in Michael's e-mail to you he states</p> <p>24 that they had already accrued 1.5, meaning Lehman's</p> <p>25 had already accrued 1.5. Is that how you read it?</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A: Yes. I am not quite sure that that is</p> <p>3       what is meant but I am not sure what else it would</p> <p>4       mean though.</p> <p>5       Q. In that same sentence he goes on to say</p> <p>6       "and we collectively tried to back into the bonus</p> <p>7       number for the parts we were taking." Do you have</p> <p>8       an understanding as to what he meant by that?</p> <p>9       A. Having gone back and said he had given</p> <p>10      me various estimates, I presume he is trying to</p> <p>11      tell me how he has tried to calculate those</p> <p>12      estimates. Yes, there is quite a lot of</p> <p>13      confusion about this, and I suppose this is just</p> <p>14      one factor. So you can understand this, Lehman's</p> <p>15      just accrued for the cash portion of their bonuses</p> <p>16      and they deferred quite a high proportion of their</p> <p>17      bonuses into -- they charged those in future</p> <p>18      years. So if they paid 100 to someone they would</p> <p>19      accrue 50 and 50 of the bonus they would charge,</p> <p>20      they accrue 50 in year one and 50 they would</p> <p>21      charge, say they were deferring it over 3 years,</p> <p>22      in year two, three and four, spread over these</p> <p>23      3 years.</p> <p>24      Barclays accrues bonuses differently. If we pay</p> <p>25      someone 100, we accrue for all of the 100 in year one. So</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       actually now I am not quite sure in terms of this what these</p> <p>3       numbers represent.</p> <p>4       Q. I am handing you a document that was</p> <p>5       previously marked as Exhibit 19. Would you take</p> <p>6       a moment to review it. Let me know when you are</p> <p>7       done.</p> <p>8       A. Yes.</p> <p>9       Q. Have you seen this document before?</p> <p>10      A. Yes, I have. I think it is</p> <p>11      a document -- I think it is a document referred to</p> <p>12      in this paragraph here. My recollection is that I</p> <p>13      had asked Michael Evans for a copy of it and I</p> <p>14      think he found it and sent me a copy of it, which</p> <p>15      is where I saw it.</p> <p>16      Q. If you look at the total line both for</p> <p>17      assets and liabilities, those balance out on this</p> <p>18      document at 72.65 billion. Do you see that?</p> <p>19      A. Yes, I can see that.</p> <p>20      Q. If you exclude the cure payment and comp</p> <p>21      category from the liabilities section, there is</p> <p>22      a differential between the total assets versus the</p> <p>23      total liabilities excluding those two items, a</p> <p>24      delta of about \$4 billion. Do you see that?</p> <p>25      A. Arithmetically, if I exclude any of the</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       liabilities, there would be a delta equal to what</p> <p>3       I excluded, I agree.</p> <p>4       Q. Was it your sense that the amount set</p> <p>5       forth for cure payment and comp were designed to</p> <p>6       balance out this balance sheet, that is how those</p> <p>7       numbers were arrived at?</p> <p>8       A. That was not my understanding but --</p> <p>9       well, my understanding, this is as I said before,</p> <p>10      in terms of the numbers, was numbers produced by</p> <p>11      Lehman's, who said that they were producing numbers</p> <p>12      in terms of trying to estimate what the LBI</p> <p>13      balance sheet was. They came up with all the</p> <p>14      estimates of the numbers. So my understanding is</p> <p>15      that they came up with -- I don't know how they</p> <p>16      came up with these numbers but they came up with</p> <p>17      the numbers for the cure payment and they came up</p> <p>18      with the number for a comp payment.</p> <p>19      My understanding at the time was they had some</p> <p>20      support or documentation behind those numbers. So I never</p> <p>21      thought that the numbers were anything other than bona fide</p> <p>22      numbers produced by Lehman's.</p> <p>23      Q. In Exhibit 286B, the e-mail from</p> <p>24      Mr. Evans to you, when he states "We collectively</p> <p>25      tried to back into the bonus number for the parts</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       we were taking", is it your belief that he was</p> <p>3       simply mistaken about how the bonus number was</p> <p>4       calculated?</p> <p>5       A. I think he is there, as I think</p> <p>6       I said -- I may not have been explicit enough --</p> <p>7       he is there describing the estimates he was giving</p> <p>8       me of the bonuses, so the 1.35 billion, so I don't</p> <p>9       think he would have had any input into the numbers</p> <p>10      which Lehman came up with. I may be wrong but</p> <p>11      that is my reading of that document.</p> <p>12      Q. And the phrase "collectively tried to</p> <p>13      back into the bonus numbers", do you have any idea</p> <p>14      what he means by that?</p> <p>15      A. I don't.</p> <p>16      (Exhibit 358A marked for identification.)</p> <p>17      Q. I have handed you a one page document</p> <p>18      marked Exhibit 358A. Please take a moment to</p> <p>19      review, tell me when you are done.</p> <p>20      A. Yes.</p> <p>21      Q. There is an e-mail chain that begins at</p> <p>22      the bottom from Paul Copson to you. Who is</p> <p>23      Mr. Copson?</p> <p>24      A. He is the head of product control for</p> <p>25      Barclays Capital, which is a group which price</p>

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<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 checks our inventory valuations and produces daily</p> <p>3 profit and loss and reconciles our balance sheet.</p> <p>4 Q. He makes a reference in his e-mail to</p> <p>5 the following: "We successfully bid on and got the</p> <p>6 LEH exchange positions", and he mentions several</p> <p>7 different exchanges. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Was it your understanding that this</p> <p>10 bidding on and getting those LEH positions was</p> <p>11 something separate and apart from the Asset</p> <p>12 Purchase Agreement?</p> <p>13 A. Yes, my understanding was that, and it</p> <p>14 is my recollection, so it may not be correct, but</p> <p>15 I think it was, the exchanges directly, not</p> <p>16 Lehmans, who were trying -- I think they may have</p> <p>17 taken on all the Lehman positions. I don't think</p> <p>18 these positions were in Lehman Brothers Inc. I</p> <p>19 think they were in a different entity, but</p> <p>20 I wouldn't be certain about that. I think the</p> <p>21 exchanges took on those positions and asked</p> <p>22 different market participants to bid for taking on</p> <p>23 those portfolios to close down the differences in</p> <p>24 the portfolios.</p> <p>25 My understanding is that there was a tender,</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 various different firms bid, and our bid was the lowest.</p> <p>3 That is what this relates to. It is nothing to do with the</p> <p>4 other acquisition. I don't know if we gave these papers</p> <p>5 erroneously or whatever, Hamish?</p> <p>6 MR. HUME: I will check.</p> <p>7 A. Anyway, that is what I believe that</p> <p>8 relates to.</p> <p>9 (Exhibit 359A marked for identification)</p> <p>10 Q. I have handed you a one page document</p> <p>11 marked Exhibit 359A. Take a moment to review it.</p> <p>12 Let me know when you are done.</p> <p>13 A. Yes, I have read it.</p> <p>14 Q. This e-mail exchange, do you recognize</p> <p>15 that it also related to the portfolios that were</p> <p>16 being discussed?</p> <p>17 A. Yes, I think it related to precisely the</p> <p>18 same portfolios we discussed before, so nothing to</p> <p>19 do with this other transaction.</p> <p>20 Q. If I am reading this correctly, James</p> <p>21 Walker is reflecting a profit/loss of greater than</p> <p>22 \$200 million on the portfolio. Is that right?</p> <p>23 A. Yes. I mean, it appears to be, just</p> <p>24 from reading this, that NYMEX or the exchanges</p> <p>25 paid us a fee of \$450 million for taking on those</p>
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<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 portfolios, and against that we had the cost of</p> <p>3 hedging and liquidating and risk management. It</p> <p>4 appeared to be the belief at that point was that</p> <p>5 the profit would be about 200 million, so the cost</p> <p>6 of risk management would be \$250 million, but</p> <p>7 again, as I have said, I am pretty certain this is</p> <p>8 a completely independent transaction.</p> <p>9 (Exhibit 360A marked for identification)</p> <p>10 Q. I have handed you a one page document</p> <p>11 marked Exhibit 360A. Would you take a moment to</p> <p>12 review it, let me know when you are done.</p> <p>13 Who is Ian Abrahams?</p> <p>14 A. He is a member of our structuring group.</p> <p>15 Q. In the discussion about negative</p> <p>16 goodwill, in his e-mail to you, he refers to</p> <p>17 suppliers as being among the parties affected by</p> <p>18 a restructuring. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Is this a discussion that concerns the</p> <p>21 cure amount entry on the liabilities section of</p> <p>22 the balance sheet that we were discussing before?</p> <p>23 A. I am not specifically sure. I don't</p> <p>24 recall receiving this e-mail at all.</p> <p>25 (Exhibit 361A marked for identification)</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 Q. Sir, I have placed before you a 3-page</p> <p>3 document marked Exhibit 361A. Would you take</p> <p>4 a moment to review that document, which is</p> <p>5 a cover, a series of e-mails with a spreadsheet</p> <p>6 attached. Let me know when you are done.</p> <p>7 A. Yes.</p> <p>8 Q. Do you see the cover e-mails are</p> <p>9 correspondence between Gary Romain, Rich Ricci and</p> <p>10 yourself and others. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. The title is: "Long Island - Draft</p> <p>13 balance sheet/goodwill calc". Calculation, is</p> <p>14 that right?</p> <p>15 A. Yes, I presume that is what it means.</p> <p>16 Q. Turning to the attachment to the cover</p> <p>17 e-mails, is that a document you have seen before</p> <p>18 today?</p> <p>19 A. There were so many different versions of</p> <p>20 these documents, I can't recall if I have seen</p> <p>21 this one precisely. I have obviously seen</p> <p>22 different versions.</p> <p>23 Q. You are familiar with the form of this</p> <p>24 document.</p> <p>25 A. I am familiar with the form of the</p>



<p style="text-align: right;">Page 90</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 document, yes.</p> <p>3 Q. You will see the cover e-mail</p> <p>4 dated September 22, 2008. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Turning your attention to the</p> <p>7 spreadsheet, the first page of the spreadsheet has</p> <p>8 a negative goodwill number of 2.98 billion. Do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. If you go back to your e-mail, that is</p> <p>12 the middle e-mail on page 1 of Exhibit 361A, from</p> <p>13 you to Rich Ricci, you state:</p> <p>14 "So some things we have to keep working on to</p> <p>15 squeeze out what we can, but looks more like 3 to 3.5 rather</p> <p>16 than 4 plus."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Your reference to the 3 to 3.5, what was</p> <p>20 that a reference to?</p> <p>21 A. I assume my reference was to the</p> <p>22 negative goodwill number, which is on the next</p> <p>23 page.</p> <p>24 Q. And when you say it looks more like 3 to</p> <p>25 3.5 rather than 4 plus, had you ever --</p>	<p style="text-align: right;">Page 91</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 A. I suppose the numbers were, as I think I</p> <p>3 have said to you before, moving all the time, so</p> <p>4 it must have been some point where the numbers</p> <p>5 were looking higher. There were huge amounts of</p> <p>6 double accounting of assets and different things</p> <p>7 in these schedules and, as I think I said before,</p> <p>8 until we actually had booked everything and</p> <p>9 finalized the valuation of everything, which took</p> <p>10 several months to do, we didn't get to the final</p> <p>11 answer. So there were many different drafts of</p> <p>12 this as the numbers changed.</p> <p>13 Q. In the line number 15 on the</p> <p>14 spreadsheet, the second page of 361A, it says:</p> <p>15 "Friday P&amp;L (approx)". Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And that is a positive</p> <p>18 200 million-dollar number there?</p> <p>19 A. Yes.</p> <p>20 Q. Is that the P&amp;L gain on the assets that</p> <p>21 were transferred over Thursday night?</p> <p>22 A. Again, I couldn't definitively tell you,</p> <p>23 as I didn't produce this, but it would appear it</p> <p>24 would be some sort of approximation. My</p> <p>25 recollection, which may be incorrect, was that the</p>
<p style="text-align: right;">Page 92</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 market moved a lot on Friday. I thought there was</p> <p>3 a much bigger gain on Friday, but I could be</p> <p>4 incorrect or it could be that this is an earlier</p> <p>5 approximation. This is dated what?</p> <p>6 Q. 22nd September. The cover e-mails are</p> <p>7 dated 22nd September.</p> <p>8 A. Yes. So probably in terms of the --</p> <p>9 well, the problem was, because we had none of</p> <p>10 these things booked on our system, all we had, the</p> <p>11 opening valuation, how much you make from</p> <p>12 something when you do not know what the starting</p> <p>13 point is, is quite difficult to determine.</p> <p>14 Q. But your recollection, I believe your</p> <p>15 answer was you believed the gain on Friday was</p> <p>16 larger than that?</p> <p>17 A. My recollection, that is going back to</p> <p>18 what I say, we took on a very large, long</p> <p>19 inventory. That inventory, again my recollection,</p> <p>20 was about \$8 billion of equities. The equity</p> <p>21 market rallied quite significantly on Friday. I</p> <p>22 remember from being extremely worried Wednesday,</p> <p>23 Thursday, Friday, hearing -- I can't remember when</p> <p>24 it was, Friday night or Saturday some time, or</p> <p>25 some time over the weekend, that the market had</p>	<p style="text-align: right;">Page 93</p> <p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 rallied a bit. I felt we had a little bit more</p> <p>3 protection because the assets had gone up.</p> <p>4 Q. I think your exact words were: "Yep, we</p> <p>5 made a load". Right?</p> <p>6 A. They could have been, yes.</p> <p>7 Q. The line 14: "Inventory - Thursday</p> <p>8 close", the 45 billion-dollar number, that was</p> <p>9 a number based off of the Bank of New York marks.</p> <p>10 Correct?</p> <p>11 A. I am not sure.</p> <p>12 Q. There is a valuation adjustment line,</p> <p>13 line 16, a negative \$2.83 billion number. Do you</p> <p>14 see that?</p> <p>15 A. Yes.</p> <p>16 Q. There is a note associated with that on</p> <p>17 the third page of the exhibit, Exhibit 361A. It</p> <p>18 describes the 2.83 billion as an initial estimate</p> <p>19 off the adjustment Barclays marks. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know the process that led to that</p> <p>23 estimate of valuation adjustment of 2.83 billion?</p> <p>24 A. If you go back to the front page of this</p> <p>25 it also says the 2.83 billion valuation adjustment</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       is S King, which would be Stephen King's first cut</p> <p>3       only. I think, as I said to you before, Stephen</p> <p>4       King was a trader who looked at asset backed</p> <p>5       securities. A lot of the securities which were</p> <p>6       under the repo were asset backed securities, which</p> <p>7       as we all know are illiquid and difficult to</p> <p>8       price. So Stephen was given the job of trying to</p> <p>9       process those. In terms of -- I remember the</p> <p>10      custodian marks were almost meaningless for those</p> <p>11      assets, which is not surprising as you really need</p> <p>12      almost asset by asset to have the expertise to</p> <p>13      understand how to mark them, whereas the custodian</p> <p>14      would not have access to them. So I know Stephen</p> <p>15      spent a lot of time trying to work out what the</p> <p>16      appropriate valuation was.</p> <p>17      <b>Q.</b> Has Barclays concluded its valuation</p> <p>18      adjustment process for the collateral that was</p> <p>19      delivered Thursday night into Friday morning?</p> <p>20      <b>MR. HUME:</b> As of when?</p> <p>21      <b>Q.</b> As of today. Are you done?</p> <p>22      <b>A.</b> As of the close of our financial</p> <p>23      statements for the end of 2008, we concluded and</p> <p>24      got to a point where we presented our opening</p> <p>25      balance sheet with audited valuations for all of</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       those positions. You may or may not know that we</p> <p>3       have a year subsequent to the date of when a</p> <p>4       transaction happens, if anything comes up, to</p> <p>5       revise those numbers, and that is coming close to</p> <p>6       expiry now, in September. Our current expectation</p> <p>7       is we are not going to make any further</p> <p>8       adjustments.</p> <p>9       <b>Q.</b> Do you know whether the adjustments that</p> <p>10      were made to the inventory, the valuation of the</p> <p>11      inventory that came over Thursday night, whether</p> <p>12      those are more or less than this \$2.83 billion</p> <p>13      valuation adjustment shown on this document, 361A?</p> <p>14      <b>A.</b> I can't remember to be honest. I know</p> <p>15      the numbers moved around a lot but I can't</p> <p>16      remember precisely what.</p> <p>17      <b>Q.</b> Orders of magnitude, is your adjustment</p> <p>18      twice that, half that?</p> <p>19      <b>A.</b> I can't remember.</p> <p>20      <b>Q.</b> On page 2 of the exhibit, the</p> <p>21      spreadsheet, line number 31 "cure payment", there</p> <p>22      is an entry of what looks like \$800 million for</p> <p>23      cure payment. Do you see that?</p> <p>24      <b>A.</b> Yes.</p> <p>25      <b>Q.</b> On September 22 what was the basis for</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       including an 800 million-dollar number for cure</p> <p>3       payment?</p> <p>4       <b>A.</b> I can't remember what the precise basis</p> <p>5       was for all these. As I said, Gary was running</p> <p>6       this process so you should talk to Gary to get the</p> <p>7       details. We were doing a lot of work to try and</p> <p>8       determine detailed lists of suppliers, et cetera,</p> <p>9       et cetera, so there was a lot of low level work</p> <p>10      going on. I don't know what stage it was at at</p> <p>11      this point. I don't know if that was a bottom up</p> <p>12      or a top down number.</p> <p>13      <b>Q.</b> For bonus accrual, line 33, you had</p> <p>14      a number of 1.7 billion. Do you see that?</p> <p>15      <b>A.</b> Yes.</p> <p>16      <b>Q.</b> Is there any reason why the</p> <p>17      2 billion-dollar number does not appear there?</p> <p>18      <b>A.</b> I am not sure if this is precisely the</p> <p>19      reason, again you should check with Gary, but in</p> <p>20      our final acquisition balance sheet, because of</p> <p>21      the way bonus payable in way of shares is</p> <p>22      accounted for, there is a different treatment for</p> <p>23      the share element. My recollection, if a share</p> <p>24      element is about 300 million -- I am not sure if</p> <p>25      in this version that was a difference but I do</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       know there is a different -- you have to accrue</p> <p>3       for the liability for the cash element, the share</p> <p>4       element gets deducted straight against your</p> <p>5       capital, so it is treated in a slightly different</p> <p>6       way. You should check with Gary if that was -- if</p> <p>7       they had a different number here. Again, as</p> <p>8       I said, we were getting different estimates all</p> <p>9       the time on the provisional numbers we had.</p> <p>10      <b>Q.</b> Was it your understanding that the share</p> <p>11      element calculation is something that would have</p> <p>12      been done as early as 22 September?</p> <p>13      <b>A.</b> I think it is unlikely but I can't</p> <p>14      remember.</p> <p>15      <b>Q.</b> The number for negative goodwill on the</p> <p>16      spreadsheet, page 2 of 361A is 2.98 billion. In</p> <p>17      the cover e-mail you have a range of 3 to 3.5. Do</p> <p>18      you have a sense of where you believed the</p> <p>19      additional .02 to .5 of goodwill was coming from?</p> <p>20      <b>A.</b> I really cannot recall.</p> <p>21      <b>Q.</b> Did you contemplate that there were</p> <p>22      certain tweaks in these numbers that would yield</p> <p>23      that goodwill?</p> <p>24      <b>A.</b> I think if you look over time these</p> <p>25      numbers went up and down. I was obviously feeling</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       optimistic, probably after a good day in the</p> <p>3       market or over the weekend, I was feeling a bit</p> <p>4       more optimistic, but I can't recall any specifics</p> <p>5       I am afraid.</p> <p>6       Q. Columns H and I in this spreadsheet, H</p> <p>7       is labeled "BCI dollars million" and then I is</p> <p>8       labeled "LLC's dollars billion". Is that just</p> <p>9       something, allocation of these items, two</p> <p>10      different entities?</p> <p>11      A. Yes, various different entities within</p> <p>12      the Barclays group were purchasing the different</p> <p>13      assets. I think this was trying to allocate the</p> <p>14      assets to the appropriate entities.</p> <p>15      Q. And the allocation of assets, what was</p> <p>16      the basis on which assets were allocated to</p> <p>17      different Barclays entities?</p> <p>18      A. I am not really the person to talk to</p> <p>19      you on that.</p> <p>20      (Exhibit 362A marked for identification)</p> <p>21      Q. I have handed you a one page document</p> <p>22      marked Exhibit 362A. Take a moment to review it.</p> <p>23      Please let me know when you are done.</p> <p>24      A. I have reviewed it.</p> <p>25      Q. The bottom e-mail is an e-mail from</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       James Trevelyan.</p> <p>3       A. Yes, he is a member of the Barclays</p> <p>4       corporate development group.</p> <p>5       Q. To you, and he is again discussing</p> <p>6       negative goodwill, and in particular the comp and</p> <p>7       cure provisions. Do you see that?</p> <p>8       A. Yes.</p> <p>9       Q. He states in his second paragraph of his</p> <p>10      e-mail:</p> <p>11      "We understand broadly that the negative goodwill</p> <p>12      arises because the 2.25 cure payment and 2.0 comp provision</p> <p>13      won't be valued at that amount but instead circa 1.3 or</p> <p>14      C1.3."</p> <p>15      Do you see that?</p> <p>16      A. Yes.</p> <p>17      Q. Do you understand that as circa 1.3?</p> <p>18      A. Yes.</p> <p>19      Q. Approximately 1.35. "The difference</p> <p>20      (2.95) giving rise to net assets for which we pay</p> <p>21      250 million." Is that how you understand that?</p> <p>22      A. Yes, I think that is right.</p> <p>23      Q. "Leading to a negative goodwill of</p> <p>24      \$2.7 billion." Is that right?</p> <p>25      A. Yes.</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       Q. Was his description of the source of the</p> <p>3       negative goodwill accurate in your view?</p> <p>4       A. In many ways you can calculate things in</p> <p>5       different ways, but in terms of the estimates we</p> <p>6       had at that time, and looking at the balance sheet</p> <p>7       which we thought under the agreement we were</p> <p>8       taking on, the assets and the liabilities we were</p> <p>9       taking on, that was the estimate. I suppose there</p> <p>10      was a lot of confusion, as I said, a lot of</p> <p>11      different versions, things changing by the minute</p> <p>12      over time, and going on for quite a long period of</p> <p>13      time. So I suppose what I tried to share was what</p> <p>14      was my provisional understanding at the time,</p> <p>15      which was in terms of -- which I think I have set</p> <p>16      out here, in terms of the compensation we were</p> <p>17      taking, and we had to take a lot of liabilities to</p> <p>18      people, it looks like my understanding at the time</p> <p>19      was -- I mean all these things developed and</p> <p>20      changed but I was saying here I thought in terms</p> <p>21      of what we accounted for was the cash portion</p> <p>22      rather than the deferred portion of the bonuses.</p> <p>23      So that would be the compensation in the opening</p> <p>24      balance sheet, which as I said I think I mentioned</p> <p>25      earlier I was erroneous in my estimate on that,</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       and on the cure payments we had potential</p> <p>3       liabilities, and I hoped at the time that we would</p> <p>4       be able to find ways of negotiating with our</p> <p>5       suppliers, so we were taking on suppliers and we</p> <p>6       would find ways of negotiating with our suppliers.</p> <p>7       So that because of the existing relationship of</p> <p>8       Barclays and the combined relationship of the</p> <p>9       combined Barclays and Lehman group, that the cure</p> <p>10      payments could be kept to a low level. So that</p> <p>11      was my hope at that point.</p> <p>12      Q. And to date what has Barclays paid out</p> <p>13      in the cure payments related to this transaction?</p> <p>14      A. I can't precisely remember. I think</p> <p>15      again it is -- I am sure we disclose it in our</p> <p>16      financials.</p> <p>17      Q. Does a number around \$300 million ring</p> <p>18      a bell?</p> <p>19      A. Not really, but it could be.</p> <p>20      Q. If you can pull before you Exhibit 361A.</p> <p>21      That was the September 22 draft balance sheet that</p> <p>22      we were looking at.</p> <p>23      (Exhibit 363A marked for identification)</p> <p>24      This 2-page document I have placed</p> <p>25      before you, marked 363A, please review it and let</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       me know when you are done. You will see Exhibit</p> <p>3       363A, if you look at the back of the e-mail chain</p> <p>4       begins with an e-mail that we were looking at</p> <p>5       previously when we looked at Exhibit 361A, which</p> <p>6       was the e-mail from Gary Romain to you and Rich</p> <p>7       Ricci and others.</p> <p>8       A. Yes.</p> <p>9       Q. On Exhibit 363A, on the first page,</p> <p>10      there is an e-mail from Rich Ricci to you in the</p> <p>11      middle of that page. Do you see that?</p> <p>12      A. Yes.</p> <p>13      Q. He states: "Need to get to 4 or no write</p> <p>14      down capacity".</p> <p>15      Do you see that?</p> <p>16      A. Yes.</p> <p>17      Q. What does he mean by that?</p> <p>18      MR. HUME: Objection, calls for</p> <p>19      speculation.</p> <p>20      Q. Do you know what he meant by that?</p> <p>21      A. No, I can't recall precisely what he</p> <p>22      meant by that.</p> <p>23      Q. And the phrase "write down capacity"</p> <p>24      does that have any meaning to you?</p> <p>25      A. No. I think you would have to ask</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       Mr. Ricci about it.</p> <p>3       Q. And then the e-mail, picking it up again</p> <p>4       from Mr. Ricci to you, he says: "I am worried".</p> <p>5       Do you see that?</p> <p>6       A. Yes.</p> <p>7       Q. Did you have any discussions with him</p> <p>8       about this topic, write down capacity?</p> <p>9       A. This is interesting. When I read that</p> <p>10      "I am worried" I just read it as general</p> <p>11      nervousness around this deal and the level of risk</p> <p>12      we were taking, because we obviously still at the</p> <p>13      time had this huge unhedged inventory arising from</p> <p>14      that deal, and market meltdown. So my assumption</p> <p>15      is that is what he is referring to. I don't know</p> <p>16      otherwise.</p> <p>17      Q. Putting this exhibit aside, do you</p> <p>18      recall having any discussions that you needed to</p> <p>19      have a certain level of negative goodwill so you</p> <p>20      would have the capacity to write down assets that</p> <p>21      had been acquired?</p> <p>22      A. No, I can't remember that. I can't</p> <p>23      recall it.</p> <p>24      MR. TAMBE : This is probably as good a</p> <p>25      time as any to take a break for lunch.</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       (Break for lunch)</p> <p>3       (Exhibit 364A marked for identification)</p> <p>4       MR. TAMBE : I have handed you a</p> <p>5       document marked Exhibit 364A. I will give you</p> <p>6       a moment to review that document. Let me know</p> <p>7       when you are done.</p> <p>8       A. I have reviewed the document.</p> <p>9       Q. There is a series of e-mails here. The</p> <p>10      second e-mail from the top is an e-mail from Paul</p> <p>11      Copson to Rich Ricci and Benoit de Vitry, and that</p> <p>12      refers to a 350 million P&amp;L from the Lehman</p> <p>13      exchange traded portfolio acquisitions. Do you</p> <p>14      see that?</p> <p>15      A. Yes.</p> <p>16      Q. Is that a reference to the exchange</p> <p>17      traded contracts we were talking about this</p> <p>18      morning, which were not part of the acquisition</p> <p>19      but were part of the portfolio that Barclays had</p> <p>20      bid for and obtained from NYMEX and other</p> <p>21      exchanges?</p> <p>22      A. Looking at this, yes, this relates to --</p> <p>23      we put a bid in for NYMEX to take on various</p> <p>24      commodities exchange rated positions from NYMEX,</p> <p>25      and we won, as I said, that bid, and this relates</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       as far as I can tell to that transaction.</p> <p>3       Q. And that is the bid where I guess you</p> <p>4       were paid 450 million to take on those positions</p> <p>5       but then had to hedge that exposure that you had</p> <p>6       acquired, correct?</p> <p>7       A. In this case how the transaction was</p> <p>8       arranged is NYMEX transferred a fee. I am just</p> <p>9       checking the earlier documents what that fee was.</p> <p>10      Q. I believe it was 400 or 450 million, if</p> <p>11      you look at Exhibit 359A.</p> <p>12      A. Yes, \$450 million. Against that fee we</p> <p>13      had the cost of liquidating or hedging that</p> <p>14      portfolio.</p> <p>15      Q. And after accounting for those costs you</p> <p>16      had a 350 million-dollar gain?</p> <p>17      A. Yes. So in this transactions those</p> <p>18      costs must have been about 100 million, though I</p> <p>19      am not sure these were the final numbers in terms</p> <p>20      of -- as you can see from the e-mail, there is</p> <p>21      still some work going on finalizing those numbers.</p> <p>22      Q. We are done with that document. If you</p> <p>23      could pull Exhibit 361A. It is the September 22nd</p> <p>24      acquisition balance sheet draft.</p> <p>25      (Exhibit 365A marked for identification)</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       I have placed before you a document marked</p> <p>3       Exhibit 365A. Would you take a moment to review that</p> <p>4       document and just let me know when you are done.</p> <p>5       A. I have reviewed the document.</p> <p>6       Q. You will see in Exhibit 365A there is</p> <p>7       a spreadsheet attached as page 2. Do you see</p> <p>8       that?</p> <p>9       A. Yes, I see it.</p> <p>10      Q. That is another version of the</p> <p>11      acquisition summary. Do you recognize it as such?</p> <p>12      A. Yes, I recognize it as a version. There</p> <p>13      were many versions I saw, so I can't recall this</p> <p>14      one.</p> <p>15      Q. The cover e-mail is an e-mail from Gary</p> <p>16      Romain to you, subject line: "Acquisition balance</p> <p>17      sheet", dated 24 September. Do you see that?</p> <p>18      A. Yes.</p> <p>19      Q. It says "Latest version".</p> <p>20      A. Yes.</p> <p>21      Q. On this particular version of the</p> <p>22      acquisition balance sheet, the negative goodwill</p> <p>23      number is 4.47 billion. Do you see that?</p> <p>24      A. Yes.</p> <p>25      Q. Almost 1.5 billion greater than the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       version we have been looking at before, the one</p> <p>3       from the 22nd, Exhibit 361A.</p> <p>4       A. Yes, I can see that.</p> <p>5       Q. It appeared to me, on a quick look at</p> <p>6       the spreadsheets, that the entire differential is</p> <p>7       explained by the change in the valuation</p> <p>8       adjustment, as opposed to a \$2.8 billion negative</p> <p>9       adjustment on the 22nd, the 24th there is a 1.38</p> <p>10      billion dollar negative adjustment. Do you see</p> <p>11      that?</p> <p>12      A. Yes, I can see there is a big change and</p> <p>13      I suppose it just goes to something I was saying</p> <p>14      about the level of uncertainty, that there were</p> <p>15      large changes happening in both directions. I am</p> <p>16      sure, as you know from looking at these documents,</p> <p>17      later you will find other changes in the other</p> <p>18      direction as well.</p> <p>19      Q. In that time period between the 22nd and</p> <p>20      24th, are you aware of any particular reason why</p> <p>21      there would have been a \$1.5 billion swing in the</p> <p>22      valuation adjustment?</p> <p>23      A. I can't recall a specific rationale.</p> <p>24      There does seem to be some reference here in the</p> <p>25      document to the timing of the prices. I am not</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       sure. I cannot recall what that difference was.</p> <p>3       Q. For the assets that were transferred</p> <p>4       over on Thursday night, the inventory that was</p> <p>5       transferred over on Thursday night, as of what</p> <p>6       date does Barclays value that inventory for</p> <p>7       purposes of its accounting?</p> <p>8       MR. HUME: Objection, lacks foundation.</p> <p>9       A. There was quite a long period where we</p> <p>10      were trying to determine precisely at what point</p> <p>11      for Barclays the acquisition occurred. I think</p> <p>12      the final position was that the acquisition was</p> <p>13      Monday morning, but you would have to confirm that</p> <p>14      with Gary Romain. That is my recollection, but</p> <p>15      there was some time in terms of getting the legal</p> <p>16      opinion about what was the appropriate time.</p> <p>17      There was a lot of confusion around that.</p> <p>18      Q. And it is your understanding that a</p> <p>19      legal opinion was obtained on that subject, is</p> <p>20      that right?</p> <p>21      A. I think we got -- I don't know if we got</p> <p>22      internal or external lawyers involved. We</p> <p>23      definitely got internal lawyers involved.</p> <p>24      Q. If the appropriate point in time would</p> <p>25      have been Monday morning, the 22nd, for</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       securities, what prices would have been used? The</p> <p>3       Friday night prices?</p> <p>4       A. Again, I remember a lot of discussion</p> <p>5       around it. I can't remember what the final</p> <p>6       conclusion on it was, but I know there were</p> <p>7       detailed discussions to work out what was the</p> <p>8       appropriate output. I think, as I mentioned</p> <p>9       before, the market was incredibly volatile at that</p> <p>10      time, and things at the close on the Friday night</p> <p>11      were very different from the open on Monday, I</p> <p>12      think you will find in quite a few days around</p> <p>13      that time, and therefore I think there was some</p> <p>14      time taken to work out what was the right and the</p> <p>15      appropriate point in time to use.</p> <p>16      Q. Do you know whether the transaction</p> <p>17      actually closed before the open on Monday or after</p> <p>18      the open on Monday?</p> <p>19      A. I think my understanding is that the</p> <p>20      court hearing was on Friday night, but in terms of</p> <p>21      precisely what time -- yes, I can't recall</p> <p>22      precisely, or I didn't know I don't think</p> <p>23      precisely what time the documents were signed or I</p> <p>24      can't recall.</p> <p>25      Q. I have placed before you, sir, a 2-page</p>

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<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 document previously marked as Exhibit 275. If you</p> <p>3 can take a moment to review it and let me know</p> <p>4 when you are done.</p> <p>5 A. Yes, I have reviewed it.</p> <p>6 Q. You will see that this is a listing of</p> <p>7 the financing facility assets. That is what the</p> <p>8 subject line says. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you understand that to be a listing</p> <p>11 of the assets that were transferred over Thursday</p> <p>12 night?</p> <p>13 MR. HUME: Objection, lack of</p> <p>14 foundation.</p> <p>15 A. As I said, I was not in New York so</p> <p>16 precisely what you mean by the assets transferred</p> <p>17 Thursday night, I am not clear on the sort of</p> <p>18 operation of what was moved when.</p> <p>19 Q. The question is slightly different. Do</p> <p>20 you understand this e-mail to be a purported</p> <p>21 listing of the assets that were transferred over</p> <p>22 on Thursday night?</p> <p>23 MR. HUME: Objection, asked and</p> <p>24 answered.</p> <p>25 A. I think I said earlier I didn't know</p>	<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 when the assets were transferred.</p> <p>3 Q. Do you have any understanding what this</p> <p>4 table is?</p> <p>5 A. It says it is -- it seems to be to do</p> <p>6 with the assets in the Fed financing facility.</p> <p>7 That is what it states in the document.</p> <p>8 Q. Was it your understanding that the</p> <p>9 assets in the Fed financing facility had in fact</p> <p>10 been transferred over to Barclays Thursday night?</p> <p>11 A. I think I told you already I was not in</p> <p>12 New York and I am not aware of when assets moved</p> <p>13 and things happened.</p> <p>14 Q. In discussion this morning you said some</p> <p>15 of the assets that were in the Fed financing</p> <p>16 facility and that were transferred to Barclays</p> <p>17 were assets that Barclays had sought to exclude in</p> <p>18 the Lehman two transaction. Is that fair?</p> <p>19 A. I said potentially some, yes. I don't</p> <p>20 think I said I had any certainty, but potentially</p> <p>21 some of them were.</p> <p>22 Q. Looking at the list of assets listed on</p> <p>23 this Exhibit 275, are there any assets here that</p> <p>24 you would identify as assets that Barclays had</p> <p>25 sought to exclude in the Lehman two transaction?</p>
Page 112	Page 113
<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. I don't think from this level of detail</p> <p>3 I would be able to determine that.</p> <p>4 (Exhibit 366A marked for identification)</p> <p>5 Q. I have handed you a 3-page document</p> <p>6 marked Exhibit 366A. If you could take a moment</p> <p>7 to review it, let me know when you are done.</p> <p>8 A. Yes, I have reviewed that document.</p> <p>9 Q. You will see that this is an e-mail</p> <p>10 chain that begins on page 2 of the chain with an</p> <p>11 e-mail from you to James Walker. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And you were requesting a balance sheet</p> <p>14 of the assets and liabilities finally acquired?</p> <p>15 A. Yes.</p> <p>16 Q. And Mr. Walker then sends that request</p> <p>17 on to Martin Kelly at Lehman?</p> <p>18 A. Yes.</p> <p>19 Q. Going up the chain, there is a response</p> <p>20 from Martin Kelly that gets forwarded to you by</p> <p>21 James Walker. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And you in turn forward that on to Chris</p> <p>24 Lucas, correct?</p> <p>25 A. Yes.</p>	<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 Q. And Mr. Lucas, in the top e-mail on page</p> <p>3 I, says to you:</p> <p>4 "If this is what comes to pass, we are fine."</p> <p>5 Do you see that?</p> <p>6 A. Yes, I did see that, and looking at this</p> <p>7 e-mail I don't have any understanding of that,</p> <p>8 particularly as I read further down the comment</p> <p>9 from James that seems to think that the situation</p> <p>10 is not very good, so I don't know how Chris came</p> <p>11 to that conclusion.</p> <p>12 Q. Do you recall having any discussion with</p> <p>13 Chris about this listing of assets and</p> <p>14 liabilities?</p> <p>15 A. I don't have any recall at all about</p> <p>16 having a discussion so I do not understand his</p> <p>17 conclusion.</p> <p>18 (Exhibit 367A marked for identification)</p> <p>19 Q. I have handed you a one page document</p> <p>20 marked Exhibit 367A. Would you take a moment to</p> <p>21 review it.</p> <p>22 A. Yes.</p> <p>23 Q. Earlier this morning we discussed</p> <p>24 a gain, a Friday gain on some equity positions.</p> <p>25 Do you remember that discussion?</p>

<p style="text-align: right;">Page 114</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. We had, as I think I said, we suddenly</p> <p>3 ended up with a position where we were acquiring</p> <p>4 solely a long inventory without offsetting short</p> <p>5 positions. We suddenly had a much more risky</p> <p>6 position, and that inventory lost a significant</p> <p>7 amount of money in the week. There was a market</p> <p>8 rally I think on the Friday, when the equity part</p> <p>9 of the position made some money, so from being</p> <p>10 incredibly depressed I think I felt it was good</p> <p>11 news on the Saturday for that market move. The</p> <p>12 level of timing -- well, as I have said, we didn't</p> <p>13 book the original transactions, so any estimate of</p> <p>14 what money we made from that market move would</p> <p>15 have been a very rough and ready: "We are long and</p> <p>16 the market went up."</p> <p>17 Q. Your reference to "Yep, so we made</p> <p>18 a load", is to that sentiment that the market went</p> <p>19 up?</p> <p>20 A. Yes, that is my recollection.</p> <p>21 Q. The e-mail at the bottom of this chain</p> <p>22 is from Lee Guy to you. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And the question he asks you I believe,</p> <p>25 first sentence, is: "What was the trade date for</p>	<p style="text-align: right;">Page 115</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 the assets that you had bought." Correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you stated on your e-mail back to</p> <p>5 him: "Trade date is Monday, completion 7 am." Do</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Any recollection as to why you were so</p> <p>9 precise in the completion time trade date is</p> <p>10 Monday, completion 7.00 am?</p> <p>11 A. No, I have not really got</p> <p>12 a recollection. I presume at some point a lawyer</p> <p>13 or someone must have told me that was the case.</p> <p>14 MR. HUME: To the extent that a lawyer</p> <p>15 told you anything it is privileged. If you are</p> <p>16 not sure --</p> <p>17 A. I am not sure.</p> <p>18 Q. Then you go on to say in your e-mail to</p> <p>19 Lee Guy: "Equity positions, we need to close down</p> <p>20 as quickly as possible." What did you mean by</p> <p>21 "close down"?</p> <p>22 A. As I said before, we had an incredibly</p> <p>23 risky position that we had taken on a huge long</p> <p>24 position in a very volatile market, so what I was</p> <p>25 specifically referring to here was that the amount</p>
<p style="text-align: right;">Page 116</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 of capital we had in the broker dealer is limited</p> <p>3 by how large your positions are, so your cap</p> <p>4 positions consume the capital, and if you have</p> <p>5 a very long outright long position or outright</p> <p>6 short position you need a huge amount of capital</p> <p>7 to support that, but also just in terms of the</p> <p>8 volatility of that market we obviously wouldn't</p> <p>9 want to sit on a huge outright exposure.</p> <p>10 Q. So to close down the position would be</p> <p>11 what, to either sell it or to hedge it?</p> <p>12 A. Yes, in some way to reduce the risk from</p> <p>13 it.</p> <p>14 Q. And the reference to DVAR in Lee Guy's</p> <p>15 e-mail to you, that is to daily VAR limits?</p> <p>16 A. Yes. Lee Guy is head of market risk for</p> <p>17 Barclays Capital and would be the person who sets</p> <p>18 and monitors all the daily value at risk limits.</p> <p>19 Q. So DVAR stands for daily value at risk?</p> <p>20 A. Yes.</p> <p>21 Q. In response to your e-mail stating that</p> <p>22 trade date is Monday, completion 7 am, Lee Guy</p> <p>23 writes back to you and says: "I thought valuations</p> <p>24 were agreed for an earlier date". Do you see</p> <p>25 that?</p>	<p style="text-align: right;">Page 117</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. Yes.</p> <p>3 Q. Do you know what he was referring to?</p> <p>4 A. Yes. I mean, here I am saying I think,</p> <p>5 and actually I probably would be speculating, but</p> <p>6 we had taken on various position, and the</p> <p>7 positions were agreed. As I said, we were exposed</p> <p>8 to these large positions. So whenever the market</p> <p>9 value was going to move up or down the value of</p> <p>10 those positions was going to move up or down. I</p> <p>11 think my original understanding was that the</p> <p>12 valuations had been agreed from the Monday of the</p> <p>13 previous week when we did the original</p> <p>14 transaction. I am not sure after a week of sleep</p> <p>15 deprivation quite if my mind would have tallied</p> <p>16 up, so it reads rather tautologous, this e-mail.</p> <p>17 At the moment I am not sure what it means.</p> <p>18 Q. Do you recall there being any agreement</p> <p>19 with Lehman as to the date as of which the</p> <p>20 valuations would be agreed?</p> <p>21 A. I think I would have to look back to see</p> <p>22 precisely what the contract said.</p> <p>23 Q. Do you recall having a discussion about</p> <p>24 completion of the transaction taking place over</p> <p>25 the weekend, as opposed to Monday?</p>

<p style="text-align: right;">Page 118</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. As I said, there was lots of discussions</p> <p>3 about lots of things. I am sure that there was</p> <p>4 some. I don't think I was really involved in it.</p> <p>5 I may have been copied on things but I can't</p> <p>6 remember specifically.</p> <p>7 Q. Do you recall there being any</p> <p>8 discussions about closing the transaction on</p> <p>9 Monday or as of Monday so that Barclays should</p> <p>10 benefit from the rallying in the markets on</p> <p>11 Friday?</p> <p>12 A. I can't recall anything to do with that.</p> <p>13 (Exhibit 368A marked for identification)</p> <p>14 Q. I have placed before you a document</p> <p>15 marked 368A. If you could take a moment to review</p> <p>16 it, please let me know when you are done.</p> <p>17 A. Yes, I have read the document.</p> <p>18 Q. This is an e-mail exchange from Stephen</p> <p>19 King to Rich Ricci, you and others. There is</p> <p>20 a reply e-mail from Eric Bombensath to Stephen</p> <p>21 King, Rich Ricci and others. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. This is an e-mail exchange that takes</p> <p>24 place on September 23, in the morning.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 119</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 Q. In Stephen King's e-mail at the bottom,</p> <p>3 he states:</p> <p>4 "We have largely identified the day one</p> <p>5 remark gap."</p> <p>6 Let me stop there. Does the phrase "remark</p> <p>7 gap" have any meaning to you?</p> <p>8 A. That phrase doesn't mean anything but I</p> <p>9 think, as we discussed earlier, Stephen was</p> <p>10 involved in doing the work in terms of valuing the</p> <p>11 assets we acquired, and my assumption is this is</p> <p>12 a reference to him trying to get an appropriate</p> <p>13 fair valuation on the assets.</p> <p>14 Q. If I continue reading the rest of that</p> <p>15 sentence, he goes on to state: "and necessary</p> <p>16 primary hedges for the positions in the repo</p> <p>17 period". Do you have an understanding as to what</p> <p>18 he meant by that?</p> <p>19 A. I suppose as we discussed earlier the</p> <p>20 transaction now involved us taking this outright</p> <p>21 long significant portfolio at a time of extreme</p> <p>22 market volatility, so we were trying to reduce the</p> <p>23 risk, and Stephen had the responsibility for</p> <p>24 managing that risk on a forward looking basis. So</p> <p>25 because we didn't have the transactions recorded</p>
<p style="text-align: right;">Page 120</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 or booked in our system, and there were thousands</p> <p>3 of these transactions, I think Stephen was trying</p> <p>4 to work out what exposures we had, and therefore</p> <p>5 trying to work out what proxy hedges he could use</p> <p>6 to cover those exposures.</p> <p>7 Q. His next sentence reads:</p> <p>8 "Those hedges are almost executed, other than</p> <p>9 2 billion off sand features, which are work in</p> <p>10 progress."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you understand from that sentence</p> <p>14 that the portfolio either on a proxy basis or an</p> <p>15 actual basis was almost fully hedged, except for</p> <p>16 this 2 billion-dollar position?</p> <p>17 MR. HUME: Objection, lacks foundation.</p> <p>18 A. Yes, I am not sure if it is quite that</p> <p>19 clear, because if you read what he says here, he</p> <p>20 says: "We have not reviewed the other positions in</p> <p>21 the box", and he talks about exchange traded</p> <p>22 derivatives. So what he says is primary hedges --</p> <p>23 I don't know what proportion of the repo those</p> <p>24 primary hedges relate to. You would have to talk</p> <p>25 to Stephen King to determine that.</p>	<p style="text-align: right;">Page 121</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 Q. Just to get a better understanding of</p> <p>3 this phrase "sand futures", do you think that is</p> <p>4 S&amp;P futures or can you divine what he might have</p> <p>5 meant by that?</p> <p>6 A. I would speculate that it was S&amp;P</p> <p>7 futures, but again I don't know that is correct</p> <p>8 and you would have to check that with Stephen</p> <p>9 King.</p> <p>10 Q. The last paragraph of Stephen King's</p> <p>11 e-mail to you begins with the discussion of the</p> <p>12 exchange traded derivatives. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. He goes on to state:</p> <p>15 "Primarily the exposure is via the OCC."</p> <p>16 Do you see that phrase in the second sentence at</p> <p>17 the end?</p> <p>18 A. Yes.</p> <p>19 Q. What was your understanding of the OCC</p> <p>20 position or positions that were part of the</p> <p>21 acquisition?</p> <p>22 A. As I think I mentioned earlier, I knew</p> <p>23 we were taking on the OCC futures positions. I</p> <p>24 can't remember now or I can't recall the precise</p> <p>25 terms beyond that of exactly what we were taking</p>



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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       on.</p> <p>3       <b>Q.</b> Do you have any understanding as to</p> <p>4       whether you were also obtaining in addition to the</p> <p>5       positions any margin or excess margin associated</p> <p>6       with those positions?</p> <p>7       <b>A.</b> If we were taking -- I suppose my very</p> <p>8       basic understanding, if you are taking on OCC</p> <p>9       futures, they are the margin, and the margin is</p> <p>10      what those positions are, because obviously they</p> <p>11      are daily margined every day. You have initial</p> <p>12      margin as well. So again, as I have said, I have</p> <p>13      not looked at the documents in detail but my</p> <p>14      assumption was always when we talk about OCC</p> <p>15      futures it was the total balances relating to</p> <p>16      those transactions.</p> <p>17      <b>Q.</b> Do you recall whether the OCC futures</p> <p>18      were one of the items, one of the further or</p> <p>19      additional assets that were discussed on the</p> <p>20      Friday of the week, the prior week?</p> <p>21      <b>MR. HUME:</b> Objection, lacks foundation.</p> <p>22      <b>A.</b> I think, as I said a bit earlier, I do</p> <p>23      recall the OCC futures were part of the original</p> <p>24      documentation and the original transaction. I was</p> <p>25      not in New York for that latter part of the week</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       and I know there were other discussions. I am not</p> <p>3       the person to ask about precisely where the OCC</p> <p>4       futures fell into that.</p> <p>5       (Exhibit 369A marked for identification)</p> <p>6       <b>Q.</b> I have placed before you a multipage</p> <p>7       document marked Exhibit 369A. Please take</p> <p>8       a moment to review it and let me know when you are</p> <p>9       done.</p> <p>10      <b>A.</b> I have reviewed it.</p> <p>11      <b>Q.</b> There is an e-mail exchange that forms</p> <p>12      I guess the first two pages of this exhibit, and</p> <p>13      it starts with an e-mail from Mark Merson to you</p> <p>14      at the bottom of page 1 over to page 2. Do you</p> <p>15      see that?</p> <p>16      <b>A.</b> Yes.</p> <p>17      <b>Q.</b> And Mark Merson is identified from his</p> <p>18      signature block as someone with investor</p> <p>19      relations. Do you see that?</p> <p>20      <b>A.</b> Yes.</p> <p>21      <b>Q.</b> Was the attachment to this e-mail which</p> <p>22      is pages 3 and 4 onwards of this Exhibit 369A,</p> <p>23      a document that was being prepared for some</p> <p>24      disclosure purpose or some public announcement</p> <p>25      purpose?</p>
Page 124	Page 125
<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       <b>A.</b> We were preparing, and Gary Romain was</p> <p>3       specifically preparing it, so that we had for the</p> <p>4       internal accounting and for PWC a clear view of</p> <p>5       what we had acquired, what assets we had acquired,</p> <p>6       so that we had an accounting list of the assets</p> <p>7       rather than a lot of complicated legal documents,</p> <p>8       so something simple for a layman to understand.</p> <p>9       <b>Q.</b> And the transaction summary that is</p> <p>10      attached to this e-mail chain, is that a document</p> <p>11      you had any hand in drafting?</p> <p>12      <b>A.</b> That document is a document which</p> <p>13      I referred to -- Gary pulled together. I think it</p> <p>14      was mainly Gary who did it. I probably reviewed</p> <p>15      it but most of the drafting I think was done by</p> <p>16      Gary and his team.</p> <p>17      (Exhibit 370A marked for identification)</p> <p>18      <b>Q.</b> I have handed you a 2-page document</p> <p>19      marked Exhibit 370A. Would you take a moment to</p> <p>20      review it and let me know when you are done.</p> <p>21      <b>A.</b> I have read the document.</p> <p>22      <b>Q.</b> At the top of the first page of</p> <p>23      Exhibit 370A, that is your e-mail to Teri Scott</p> <p>24      and others. Do you see that?</p> <p>25      <b>A.</b> Yes.</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       <b>Q.</b> And you are providing at least a summary</p> <p>3       of the balance sheet, based on information that</p> <p>4       you had as of the date that you provided this</p> <p>5       response, correct?</p> <p>6       <b>A.</b> Yes.</p> <p>7       <b>Q.</b> The subject line is "FSA meeting". Do</p> <p>8       you see that?</p> <p>9       <b>A.</b> Yes.</p> <p>10      <b>Q.</b> What was your understanding of what</p> <p>11      discussions were going on or were contemplated to</p> <p>12      be had with the FSA on the issue of the balance</p> <p>13      sheet?</p> <p>14      <b>A.</b> I think my understanding is probably</p> <p>15      what it says in this e-mail, which you can read in</p> <p>16      the e-mail from Rupert Fowden, that they wanted</p> <p>17      a balance sheet net asset value diagram of a trade</p> <p>18      and they wanted to talk to the FSA about the</p> <p>19      Lehman models.</p> <p>20      <b>Q.</b> Looking at item four of Rupert's e-mail,</p> <p>21      he states: "We neither need the FSA to grant us</p> <p>22      a waiver that accepts the Lehman models for FSA</p> <p>23      purposes." Do you see that?</p> <p>24      <b>A.</b> Yes.</p> <p>25      <b>Q.</b> Was that something that Barelays in fact</p>

<p style="text-align: right;">Page 126</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 requested from the FSA?</p> <p>3 A. Yes, we did. Just so you can</p> <p>4 understand, so Lehman's had a broker dealer, and</p> <p>5 for their local regulation they used various</p> <p>6 models to calculate their capital. When we moved</p> <p>7 that business across to Barclays' broker dealer in</p> <p>8 the US we didn't have that same model approval</p> <p>9 from the regulators. So there were two separate</p> <p>10 things we did. One was to get the SEC to agree</p> <p>11 that we could move those models across, so for US</p> <p>12 reporting we could use the same models that Lehman</p> <p>13 had used beforehand.</p> <p>14 The second thing was to get the FSA to recognize</p> <p>15 those models as part of our consolidated capital filings, so</p> <p>16 we did ask them for a waiver.</p> <p>17 Q. And you obtained such a waiver?</p> <p>18 A. We have not been given one. We have not</p> <p>19 been given a waiver.</p> <p>20 Q. And the fact that you have not been</p> <p>21 given a waiver, has that affected the way that you</p> <p>22 have accounted for the acquisition?</p> <p>23 A. It has nothing to do with the accounting</p> <p>24 for the acquisition. It means that we have a lot</p> <p>25 more capital against positions than we thought we</p>	<p style="text-align: right;">Page 127</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 would have when we thought we would have a waiver.</p> <p>3 So this waiver is nothing to do with accounting;</p> <p>4 it is a regulatory capital point.</p> <p>5 Q. I have placed before you a document that</p> <p>6 we have previously marked as Exhibit 86B. If you</p> <p>7 can take a moment to review it and let me know</p> <p>8 when you are done.</p> <p>9 A. I have reviewed it.</p> <p>10 Q. Are you familiar with this document,</p> <p>11 sir?</p> <p>12 A. It feels like a bit of a floating</p> <p>13 document. Do you know where it came from?</p> <p>14 Q. I can tell you what I do know about this</p> <p>15 document. It was produced by Barclays, so we will</p> <p>16 start with that, and at least your lawyers have</p> <p>17 referred to this document, 9519, and the</p> <p>18 continuing documents behind that as a spreadsheet</p> <p>19 containing information provided to Barclays'</p> <p>20 auditors relating to values that Barclays booked</p> <p>21 for the securities received from Lehman and JPM.</p> <p>22 Does that help you place the document?</p> <p>23 A. I am not sure I have seen this document.</p> <p>24 I have seen similar documents.</p> <p>25 Q. Do you generally understand what the</p>
<p style="text-align: right;">Page 128</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 information that has been provided in the columns</p> <p>3 or the column headings mean and what the row</p> <p>4 headings mean?</p> <p>5 A. I think I would understand the first</p> <p>6 column as being the notional.</p> <p>7 Q. Column B?</p> <p>8 A. Column B, yes. Column C being Bank of</p> <p>9 New York valuations and column D being the product</p> <p>10 control and product control value. I am not quite</p> <p>11 sure what the other columns here mean.</p> <p>12 Q. And the other columns, column E, let's</p> <p>13 look at E and F on page 1 of Exhibit 86B, column E</p> <p>14 says "MV", market value. Do you understand that</p> <p>15 as market value?</p> <p>16 A. Yes, it would be. I am just not quite</p> <p>17 sure what the hieroglyphics on column E means.</p> <p>18 There is a collection of hieroglyphics there which</p> <p>19 are not intuitively clear.</p> <p>20 Q. Putting the document aside, are you</p> <p>21 aware of any bid offer adjustments being made to</p> <p>22 valuations of the securities acquired from Lehman?</p> <p>23 A. When we value the securities we have to</p> <p>24 value them at the bid level. So in our opening</p> <p>25 balance sheet we would have had to value all the</p>	<p style="text-align: right;">Page 129</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 positions and securities in that balance sheet and</p> <p>3 bid, and I was aware there was a lot of work.</p> <p>4 This is during September, but I don't think as</p> <p>5 I said before that work was really finally</p> <p>6 completed until the end of the year, end of 2008</p> <p>7 or early 2009, to actually get the appropriate bid</p> <p>8 offer value, so there are a lot of changes to</p> <p>9 these schedules over time.</p> <p>10 Just so you understand, at this point,</p> <p>11 as I think I have said earlier, we still had not</p> <p>12 booked these positions on to our systems, and we</p> <p>13 had many thousands of positions we were taking on,</p> <p>14 and so I assume this exercise was done at some top</p> <p>15 down level or on spreadsheets or something, but it</p> <p>16 was not sort of an official books and records</p> <p>17 calculation.</p> <p>18 Q. Column F is titled "PCG liquidity</p> <p>19 values". Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Putting aside the bid offer adjustment,</p> <p>22 was it your understanding that in addition to the</p> <p>23 bid offer adjustment there was a liquidity</p> <p>24 adjustment that was made for certain of the</p> <p>25 assets?</p>

<p style="text-align: right;">Page 130</p> <p><b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>A. I am not quite sure what that represents. What I do recall is that the desk, going back to Stephen King and those people did valuations of the assets, and product control, which is the independent valuation group tried to do a valuation of the assets. The problem product control had, which took them some time, they didn't have necessarily all the details or all the information to mark those assets, and I suspect, and I may not be correct but I think there was a time where the difference between what the desk valuation was and product control valuation was, there was a difference, which may be what this liquidity value is.</p> <p>As I said, we spent a lot of time between September and earlier this year going through detail by detail to iron that out, to make sure that what we reflected was the right bid value across the whole portfolio. So I am pretty sure we didn't have any liquidity adjustment when we got to our final numbers.</p> <p><b>Q. As of today, have you in fact completed your analysis of the valuation of the securities that were acquired as part of the Lehman/Barclays transaction?</b></p>	<p style="text-align: right;">Page 131</p> <p><b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>A. I think I said to you before that effectively we had more or less in our financials for 2008, we had that option to keep our financials open for a year, to the end of September, but in terms of valuations or positions I am not aware of any intention to change those numbers.</p> <p><b>Q. Do you have a CUSIP by CUSIP report at Barclays for each CUSIP acquired, the value at which it was acquired and booked into your systems?</b></p> <p>A. I think we have done all the work. In terms of precisely what level of reports we have, I am not the person to ask.</p> <p><b>Q. Who would be the person to ask?</b></p> <p>A. It would be the people probably in the product control department who had done that work --</p> <p><b>Q. Any particular names?</b></p> <p>A. -- or their managers. I am trying to think who. I think Marcus Mortimer was a guy who was running that valuation work so it would be him or people in his team.</p> <p><b>Q. And is that exercise or that valuation</b></p>
<p style="text-align: right;">Page 132</p> <p><b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>exercise something that you would be consulted on and providing input to?</p> <p>A. No, because Marcus Mortimer runs the independent valuation group. So his group job is to do independent valuations of positions. As I think I said, this is going through thousands and thousands of positions. I don't have the expertise to go through thousands of position and say "This is worth this, that or the other", so it would be his group. It was his group who did the work.</p> <p><b>Q. When you say independent valuation group you mean it is a group independent of the traders?</b></p> <p>A. We have, yes, a system where the traders primarily mark positions, on the basis that they are the people who are trading in the market every day, understand what price the assets are trading at in the market, and therefore have the best information. Marcus Mortimer's group go and independently validate the positions, the prices on all of our positions across all of our different trading desks. So that is our normal process. We followed the same process in terms of this opening balance sheet. So the primary</p>	<p style="text-align: right;">Page 133</p> <p><b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>valuation was done by the trading group, the product control valuation was effectively this price validation group testing.</p> <p>What I said before is it took some time and there were some differences, to my understanding, on both sides. So the trader valuation changed, the product control valuation changed, to true those up, but that was trued up in terms of what we reported at the end of last year and audited.</p> <p><b>Q. I have handed you a one page document marked previously as Exhibit 87B. Would you take a moment to review it and I will ask you some questions about it.</b></p> <p>A. Could I just ask the same question about precisely where the document comes from?</p> <p><b>Q. I believe it is in the same range of documents as before, but let me confirm that for you. Yes, this too has been identified, produced by Barclays, identified by your counsel as the spreadsheets containing information that were provided to Barclays' auditors relating to values that Barclays booked for the securities received from Lehman and JPM.</b></p> <p>A. Just one thing, we talked about various</p>

<p style="text-align: right;">Page 134</p> <p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       drafts of the acquisition balance sheet and</p> <p>3       I talked about this process being a quite long,</p> <p>4       involved and complex process, taking until</p> <p>5       early January to complete in the 2008 financials.</p> <p>6       I also think as part of that there was a series of</p> <p>7       documents which were provided to</p> <p>8       PriceWaterhouseCoopers. I was not involved</p> <p>9       necessarily in those chains so I just don't have</p> <p>10      an understanding of what versions these are in</p> <p>11      terms of that, just so you understand that.</p> <p>12      Q. Putting aside whether this is a final</p> <p>13      version or interim version, I want to get your</p> <p>14      understanding of again the types of data that are</p> <p>15      included on this document. Can you help us with</p> <p>16      that? You can go column by column if you like.</p> <p>17      A. Looking at this document, Exhibit 87B,</p> <p>18      for a change, column B would appear to be the</p> <p>19      notional of the exposures. Column C says, as at</p> <p>20      30 September, what the front office valuation of</p> <p>21      those positions were. I am assuming this is as of</p> <p>22      30th September.</p> <p>23      Column D seems to be a JP value, which I would</p> <p>24      assume applies to JP Morgan, as of 30 September.</p> <p>25      Column E seems to be a 22nd December valuation.</p>	<p style="text-align: right;">Page 135</p> <p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       It seems a rather strange date and I don't know that would</p> <p>3       be a valuation prepared on that date or as of that date. It</p> <p>4       seems slightly strange. I do not understand what the last</p> <p>5       two columns refer to, liquidity or -- column F and G.</p> <p>6       Q. The assets that were acquired from</p> <p>7       Lehman, do you know if any of those assets have</p> <p>8       been sold?</p> <p>9       A. The assets acquired from?</p> <p>10      Q. Lehman?</p> <p>11      A. Lehman, as a whole?</p> <p>12      Q. Yes. Have any of those assets been</p> <p>13      sold?</p> <p>14      A. Yes, I think quite a lot of the assets</p> <p>15      which we did acquire from Lehmans were sold and</p> <p>16      liquidated in the period from the transaction to</p> <p>17      now. I think the majority, I don't know precisely</p> <p>18      how much.</p> <p>19      Q. With respect to assets that were sold,</p> <p>20      are you aware of any convention or practice that</p> <p>21      was followed by Barclays in valuing those</p> <p>22      transactions, as apart from assets that in fact</p> <p>23      have not yet been sold?</p> <p>24      A. I don't really quite understand the</p> <p>25      question, in terms of we revalue transactions all</p>
<p style="text-align: right;">Page 136</p> <p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       the time, so on a daily basis in most cases,</p> <p>3       sometimes on a monthly basis, if the market is</p> <p>4       very liquid, and you are unable to do it more</p> <p>5       frequently than that. Assets which are sold would</p> <p>6       be valued up until the point when they are sold,</p> <p>7       and then they will be sold and obviously realized</p> <p>8       whatever the sale proceeds are.</p> <p>9       Q. So if you have an asset that was valued</p> <p>10      at a million dollars, you sold it for 900,000, you</p> <p>11      wouldn't go back and change the value of that</p> <p>12      asset, you would record a loss on the sale of that</p> <p>13      asset. Is that fair?</p> <p>14      A. Yes, you have not got an asset to change</p> <p>15      the value, it is no longer in your books and</p> <p>16      records, so if you -- well, just to be clear, if I</p> <p>17      have an asset and if I acquire an asset from</p> <p>18      Lehmans which was worth a million at acquisition</p> <p>19      date, and I finally got it on my books and records</p> <p>20      and finally reconciled it quite a lot later than</p> <p>21      acquisition date, I then have to back-calculate</p> <p>22      what was it worth then. So at the end of the</p> <p>23      first month after acquisition I would revalue it</p> <p>24      at the prevailing mark price. If I sold -- let's</p> <p>25      say I bought it for a million, it was worth</p>	<p style="text-align: right;">Page 137</p> <p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       900,000 the end of the first month, I would</p> <p>3       recognize there is 100,000 loss on that first</p> <p>4       month. If I sold it for 900,000 the second month,</p> <p>5       I would recognize in that case no gain or loss in</p> <p>6       the second month. That is a standard convention</p> <p>7       which we would do, and we follow the same</p> <p>8       convention in terms of these.</p> <p>9       Q. That was one of my questions. You know</p> <p>10      of no deviation from that convention with respect</p> <p>11      to the Lehman assets?</p> <p>12      A. The only deviation, which is the one I</p> <p>13      have explained, is normally on transactions we</p> <p>14      have booked in our systems and therefore would be</p> <p>15      subject to sort of automatic processes and</p> <p>16      revaluations. Because these assets took a time to</p> <p>17      book on our systems, which they were not fully</p> <p>18      booked until after the date of the acquisition</p> <p>19      balance sheet, you then had to do some -- I don't</p> <p>20      know as I said before precisely how this was</p> <p>21      done -- you had to do some work to work out what</p> <p>22      was the acquisition value of those assets.</p> <p>23      Because at the time, the earlier time of the deal,</p> <p>24      we didn't. So Monday morning we didn't walk in</p> <p>25      and all thousands of positions had miraculously</p>

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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 got into our books and records.</p> <p>3       Some of those positions, such as these JP Morgan</p> <p>4 Chase ones, for example, were not actually delivered until</p> <p>5 at the end of the year, during December, and some of the</p> <p>6 positions, as you are aware, still have not been delivered.</p> <p>7       So we had to value the assets but we don't have</p> <p>8 a sort of physical stock record for those assets on our</p> <p>9 books and records.</p> <p>10      Q. Let me ask you a follow-up question on</p> <p>11 the assets that have not yet been delivered. Have</p> <p>12 any of those assets been reflected in your</p> <p>13 accounting assets that you acquired but you don't</p> <p>14 actually have possession of yet?</p> <p>15      A. I think I told you before that they have</p> <p>16 been reflected in our accounting records because</p> <p>17 we have legal title to those assets, and we did</p> <p>18 disclose in our June 09 financials in a note the</p> <p>19 amount of the assets which had not been delivered</p> <p>20 which were disclosed in our financials.</p> <p>21      MR. TAMBE: We can take a short break</p> <p>22 now if you want.</p> <p>23           (A short break).</p> <p>24      MR. TAMBE: I have handed you</p> <p>25 a multipage document previously marked as</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 Exhibit 88B. Take a moment to review it and let</p> <p>3 me know when you are done.</p> <p>4      A. Could you explain what this document is?</p> <p>5      Q. The document, in the cover letter</p> <p>6 producing this document your lawyer has described</p> <p>7 this as a collection of documents containing</p> <p>8 information that was provided to Barclays'</p> <p>9 auditors related to the acquisition balance sheet.</p> <p>10     This seems to be a collection of various</p> <p>11 spreadsheets, but let's start with the first</p> <p>12 2 pages, which appear to go together. Are you</p> <p>13 familiar with that spreadsheet?</p> <p>14      A. This appears to be broken down in</p> <p>15 sterling and dollars of the items on the</p> <p>16 acquisition balance sheet. I think this appears</p> <p>17 to be a fairly final version, though I am not sure</p> <p>18 if I can confirm if this was the final version.</p> <p>19      Q. How would you confirm whether this was</p> <p>20 the final version?</p> <p>21      A. I suppose I would ask the people, I</p> <p>22 think it was Gary Romain who was doing the work on</p> <p>23 this, and check that this reconciled to the</p> <p>24 amounts which we finally had in our books and</p> <p>25 records and disclosed.</p>
Page 140	Page 141
<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2      Q. The sterling gain shown on page 2 of</p> <p>3 this exhibit, 2.2 billion sterling gain, is in</p> <p>4 fact the number that is disclosed in the figures</p> <p>5 for 2008, the results announcement?</p> <p>6      A. Okay, which is why I thought it looked</p> <p>7 fairly final, but whether this -- it is just</p> <p>8 confirming whether all the other numbers are the</p> <p>9 final numbers, I am not sure.</p> <p>10     Q. Moving further down this exhibit, 88B,</p> <p>11 the third and fourth page appear to be another</p> <p>12 version of the Long Island acquisition balance</p> <p>13 sheet. Do you see that?</p> <p>14      A. Yes.</p> <p>15     Q. On the fourth page, so that is the page</p> <p>16 that has the little number at the bottom, it says</p> <p>17 9157. Do you see that?</p> <p>18      A. Sorry, the fourth page?</p> <p>19     Q. And the number I have pointed to is this</p> <p>20 number on the right-hand corner, 9157.</p> <p>21      A. Yes.</p> <p>22     Q. On that page there is a negative</p> <p>23 goodwill pre deferred tax amount of 3.7 billion.</p> <p>24 Do you see that? Line 52.</p> <p>25      A. Yes, I can see that.</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2      Q. Can you tell by looking at this sheet,</p> <p>3 page 9156 and 9157, whether this is a near final</p> <p>4 version of the acquisition balance sheet in this</p> <p>5 format?</p> <p>6      A. As I said, some of the numbers look</p> <p>7 fairly final. I don't have a photographic</p> <p>8 recollection of numbers so I am not the person to</p> <p>9 ask.</p> <p>10     Q. This type of documents would have been</p> <p>11 prepared by whom?</p> <p>12      A. By Gary Romain or people in his team.</p> <p>13     Q. If you turn to page 9156, the first page</p> <p>14 of this particular spreadsheet, so it is 9156, you</p> <p>15 will see on that page there are amounts listed for</p> <p>16 cure payment of about \$220 million?</p> <p>17      A. Yes.</p> <p>18     Q. Again, do you have an understanding as</p> <p>19 to whether that was the final cure amount?</p> <p>20      A. Yes, as I said, I think the acquisition</p> <p>21 balance sheet was fairly finalized at the end of</p> <p>22 last year. I am aware that there have been some</p> <p>23 small additional amounts this year but as I think</p> <p>24 I said earlier we don't currently plan to adjust</p> <p>25 the acquisition balance sheet.</p>

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       Q. Do you have Exhibit 86B before you. We  
3 discussed that document before the last break and  
4 one of the columns we were talking about was the  
5 column that has the MV 09-22. Then it says:  
6 "W.bid - offer". Do you see that?  
7       A. Yes.  
8       Q. You said that the positions were valued  
9 at the bid. Do you remember that?  
10      A. Yes.  
11      Q. Why were the positions valued at the  
12 bid?  
13      A. Because that is what they have to be  
14 valued at under the accounting rules.  
15      Q. What accounting rules?  
16      A. Under IFRS accounting rules. All  
17 trading positions, where you have a long position  
18 you value it at the bid and short position you  
19 value at the offer price. The specific accounting  
20 rules around acquisitions are you have to fair  
21 value all the assets and liabilities when you  
22 acquire, when you do the acquisition, and in terms  
23 of fair valuing financial instruments you have to  
24 value long at bid and short at offer.  
25      Q. And for the assets that were acquired

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2 those bid prices, and then our auditors have gone  
3 through that as well, to make sure that those  
4 prices they thought were appropriate. So you had  
5 three groups of people looking at it.  
6       Q. Where would the bid information have  
7 come from for the assets that were acquired from  
8 Lehman?  
9       A. For each asset in each market you have  
10 to try and work out what the bid price was, so  
11 that obviously different things -- some markets  
12 you would be able to see transactions and bid  
13 offer quotes on the day of the valuation, so you  
14 would be able to see back to, for this portfolio,  
15 which came from JP Morgan, and I think it is the  
16 22nd. No, this is the day before. This portfolio  
17 is 22nd September. So for some things you would  
18 be able to see bid offer quotes on things for  
19 those markets at that point in time, and where  
20 those are available those are what we used.  
21       For more illiquid markets you would have to try  
22 and look at trades or trades near that date to try and work  
23 out what the right bid price for those assets were. As  
24 I said, it was a lot of work done, which is partly why it  
25 took a lot of time to complete the acquisition balance

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2 from Lehman, Barclays and Lehman did not have  
3 a bid offer spread quoted for of those assets,  
4 correct?  
5       A. Sorry, Barclays and Lehman?  
6       Q. Barclays/Lehman, when they were doing  
7 the negotiations, there was not a bid offer spread  
8 being negotiated between the two parties, correct?  
9       A. The original, going back to the original  
10 Monday balance sheet which was being negotiated,  
11 it was the bid price which was the price which was  
12 being negotiated for those assets. That was what  
13 the negotiations were about, agreeing that bid  
14 price to acquire that portfolio of assets.  
15      Q. How about for the transaction that was  
16 actually executed, were there any such  
17 negotiations?  
18      A. I think because of the timing and the  
19 lack of availability of the information on that, I  
20 am not aware, as I said I was not in New York, but  
21 I was aware of discussions that were held, but we  
22 went through exactly the same process, but in this  
23 time, as I went through earlier, we went through  
24 that process with the desk and through the  
25 independent process with product control, testing

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2 sheet.  
3       Q. Then you described a process where once  
4 the assets were on or were recorded in your  
5 systems you would on a periodic basis, either  
6 weekly or monthly, be revaluing those assets?  
7       A. Yes.  
8       Q. Now, that revaluation exercise, would  
9 that be done at the bid or the offer or would that  
10 be done on midmarket prices?  
11      A. We do different things for different  
12 portfolios. So for some portfolios we revalue  
13 them daily at midmarket, and then we have a bid  
14 offer adjustment across the whole portfolio. For  
15 other portfolios we may value individual positions  
16 on bid and offer. More normally I think for the  
17 bigger portfolios we have a bid offer adjustment  
18 across the portfolio and we use a similar  
19 mechanism to work out what that should be.  
20      Q. Again, in the revaluation phase or  
21 process, the requirement to value at bid offer, is  
22 that an IFRS requirement?  
23      A. Yes, it is actually the same requirement  
24 I think under US GAPP, but it is an IFRS  
25 requirement.

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       (Exhibit 371A marked for identification)  
3       Q. I have handed you a document marked  
4       Exhibit 371A. It is a copy of Barclays' interim  
5       results announcement as of 30 June 2009. If you  
6       want to take a moment to look through the  
7       document, just let me know when you are done.  
8       MR. HUME: Might take more than  
9       a moment. It is quite long.  
10      Q. You can look at it to make sure it is  
11      what in fact it purports to be.  
12      A. I was going to say it looks like it from  
13      the investor relations page, something downloaded  
14      from the internet rather than --  
15      Q. That is probably right.  
16      A. We will have to assume that it is the  
17      final version of the announcement I think for the  
18      purposes of this.  
19      Q. You had earlier referenced that in this  
20      report Barclays had identified certain assets that  
21      were yet to be -- that it had yet to gain  
22      possession of relating to the acquisition. I  
23      don't know whether you know where that entry is.  
24      If I can I will direct you to it.  
25      A. Note 15 on page 57. Sorry, you said you

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       so we didn't reflect those assets because we  
3       didn't have sufficiently reliable estimates of  
4       those valuations to include them in our accounting  
5       records.  
6       Q. Was that still the case as of  
7       30 June 2009 in respect to that 400 million pound  
8       number?  
9       A. No, because at 30 June we had actually  
10      quantified and calculated what these assets were  
11      worth. I think we made it fairly clear here that  
12      we have not recognized them at 30 June.  
13      Q. Of the 2.2 billion, this report states  
14      that the amount is largely comprised of margin and  
15      collateral attributable to the acquired businesses  
16      and cash and securities receivable under the terms  
17      of the acquisition. Can you offer any further  
18      sort of granularity on that? How much is margin  
19      and collateral, how much is cash, how much is  
20      securities?  
21      A. As I think I told you before, I am not  
22      very good at having a photographic memory for  
23      numbers, so I am not sure I could, but I think  
24      I did mention before that quite a significant  
25      portion of these balances relate to client assets

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       couldn't find it?  
3       Q. I couldn't find it before. You have  
4       directed me to it. This is the part I was looking  
5       for. I am focusing on the second paragraph of  
6       this note. It states:  
7       "Approximately 2.2 billion pounds of the assets  
8       acquired had not been received by June 30".  
9       Then it goes on to discuss the fact that  
10      approximately 1.8 billion of these assets were recognized as  
11      part of initial accounting?  
12      A. Yes.  
13      Q. What is the explanation, if any, for the  
14      400 million or so that were not recognized as part  
15      of the initial accounting? Why were they not  
16      recognized as part of the initial accounting?  
17      A. At the 31 December, when we drew up the  
18      acquisition balance sheet, we reflected all the  
19      assets which we were clear that we had legal title  
20      on, and also we were clear that we could, you  
21      know, we had valuations and identity of the  
22      assets. There are some assets which at that time  
23      we had legal title to or believed we had legal  
24      title to them but we didn't have access or we  
25      didn't have the information around those assets,

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       from the Lehman PIM business, private investment  
3       management business. Actually, sorry, I think it  
4       may mention that specifically here in this note.  
5       Q. I guess that is what I am trying to  
6       figure out. There is a reference further down  
7       that paragraph to the recognizing of a receivable  
8       from the LBI bankruptcy estate of approximately  
9       700 million pounds?  
10      A. That relates to the PIM, so they split  
11      it out separately.  
12      Q. And that 700 million pounds number, is  
13      that included in either of the 2.2 or the 1.8 or  
14      is that separate?  
15      A. I think if you read what it says here,  
16      it says "in addition", so I am fairly sure it is  
17      in addition.  
18      MR. TAMBE: Let's take a short break. I  
19      don't think I have any more questions. Let me  
20      make sure.  
21      (A short break.)  
22      CROSS-EXAMINATION BY MR. WOOD:  
23      MR. WOOD: Mr. Clackson. I am John Wood  
24      from Hughes, Hubbard & Reed and we represent the  
25      SIPA Trustee.

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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       (Exhibit 372A marked for identification)</p> <p>3       I am handing you a copy of what has been</p> <p>4       marked as Exhibit 372A. Go ahead and take</p> <p>5       a moment to look it over.</p> <p>6       MR. HUME: Before you answer any</p> <p>7       questions on the document, let me just ask the</p> <p>8       witness if there are, since it is a tax question</p> <p>9       again, if there are tax lawyers on here.</p> <p>10      A. No, there are not any tax lawyers.</p> <p>11      MR. WOOD: I will just note on the</p> <p>12      record I didn't see any Bates number on here but</p> <p>13      I do believe this is part of the production from</p> <p>14      Barelays.</p> <p>15      MR. HUME: That is odd.</p> <p>16      MR. WOOD: Have you had a chance to look</p> <p>17      over the document?</p> <p>18      A. Sorry, can I have a minute more to</p> <p>19      understand it?</p> <p>20      MR. WOOD: Of course.</p> <p>21      A. Yes.</p> <p>22      Q. You see it is a one page document</p> <p>23      containing two e-mails, the first one</p> <p>24      chronologically is from Derek Masser</p> <p>25      on September 17, 2008. Subject is "Lehman gain".</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       You replied later that same day, September 17.</p> <p>3       The disparity in the time I think is only because</p> <p>4       on the top it is GMT and the lower one is not. In</p> <p>5       your reply you write:</p> <p>6       "Tax rate is correct for the deal. Keep to</p> <p>7       1475. I don't want to oversell".</p> <p>8       Do you see that?</p> <p>9       A. Yes.</p> <p>10      Q. Where did the 1475 number come from?</p> <p>11      A. I can't recall but it looks like if you</p> <p>12      look at the e-mail below he said 1485, which he</p> <p>13      was rounding up to 1500. I am not sure if I was</p> <p>14      trying to repeat the 1485 but got it wrong or</p> <p>15      whether I was rounding it down 10, rather than</p> <p>16      rounding it up 15. I can't recall which of those</p> <p>17      two I was doing.</p> <p>18      Q. Do you recall what you meant by: "I</p> <p>19      don't want to oversell"?</p> <p>20      A. I think at this time he was saying what</p> <p>21      is the forecast gain, so the RAF here means the</p> <p>22      revised annual forecast, and I would think I was</p> <p>23      just saying if you round up a number, people</p> <p>24      believe it is a bigger number, so I thought it was</p> <p>25      unwise to round up. I think that is all I meant</p>
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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       by this.</p> <p>3       Q. When you wrote "oversell", oversell to</p> <p>4       whom?</p> <p>5       A. This was going into, as I said, an</p> <p>6       internal forecast, so it would be internally, for</p> <p>7       people to oversell internally.</p> <p>8       Q. 366A, you should already have in your</p> <p>9       pile there. Let me make sure that is correct.</p> <p>10      This is 366A. The top of it is an e-mail from</p> <p>11      Chris Lucas. The one that is already marked as</p> <p>12      366A is the one you should focus on.</p> <p>13      A. Shall I retain this one?</p> <p>14      Q. No, you can discard that one and focus</p> <p>15      on the one that is already marked. Mr. Tambe</p> <p>16      already asked you some questions about that.</p> <p>17      I just have one follow-up question. You see in</p> <p>18      the middle there there is an e-mail from James</p> <p>19      Walker to you, Sunday, September 21st. 2:52 is</p> <p>20      the time. It says: "FYI, which combined with</p> <p>21      Stephen's situation is not great". Do you</p> <p>22      remember that to be Stephen King?</p> <p>23      A. Yes, I think I assumed that was Stephen</p> <p>24      King. I can't recall precisely what James is</p> <p>25      referring to here.</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       Q. You don't know what the situation is?</p> <p>3       A. No. But as I said before Stephen was</p> <p>4       looking at the inventory and evaluation of the</p> <p>5       inventory. We had great concerns that we had not</p> <p>6       done the due diligence of that inventory, and</p> <p>7       Stephen was looking at trying to work out what it</p> <p>8       was worth.</p> <p>9       Q. Do you know what the "is not great"</p> <p>10      referred to?</p> <p>11      A. I presume that meant going back to the</p> <p>12      work Stephen was doing. His early review of that</p> <p>13      inventory was not looking positive in terms of the</p> <p>14      valuations of it.</p> <p>15      Q. That is all I have on that document.</p> <p>16      Would you look at Exhibit 209. Mr. Clackson, I</p> <p>17      have just handed you what has already been marked</p> <p>18      as Exhibit 209, a 3-page e-mail string.</p> <p>19      A. Yes.</p> <p>20      Q. The earliest chronologically was on</p> <p>21      Sunday September 21st, the latest one was from</p> <p>22      Rich Ricci to you, cc-ing Gerard LaRocca, on</p> <p>23      Monday September 22nd. The subject line for all</p> <p>24      of these appears to be "Updated opening balance</p> <p>25      sheet". Do you see on the first page there is an</p>



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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       e-mail from Gary Romain to you, dated</p> <p>3       Monday September 22nd, at 10:14 am. It says:</p> <p>4       "Patrick, Martin confirmed below (and verbally)</p> <p>5       that the \$1.9 billion assets left in their box is already</p> <p>6       included in the 44.88 billion of billion assets (per his</p> <p>7       balance sheet)."</p> <p>8       First of all, do you know if that is correct, and</p> <p>9       if it is helpful I can show you other documents that have</p> <p>10      used the 44.88 to fill you in on some more numbers.</p> <p>11      A. I am not clear what the reference to per</p> <p>12      Martin's balance sheet is so, yes, I can read what</p> <p>13      it says here but I can't confirm it is correct.</p> <p>14      Q. I may come back to that when I go to</p> <p>15      another document that has a similar number in it.</p> <p>16      If you look just above that there is an e-mail</p> <p>17      from you on September 22nd at 5:46 pm, in which</p> <p>18      you write: "Not looking good for the 1.9 billion."</p> <p>19      Do you know what you meant by that?</p> <p>20      A. As we were trying to work out precisely</p> <p>21      what we had acquired on the deal, and as I think</p> <p>22      I said various times there were lots of different</p> <p>23      versions and estimates and approximations, I think</p> <p>24      at some point we had understood that the 1.9 had</p> <p>25      been in addition to other things. It looks from</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       here that that assumption was wrong and we had</p> <p>3       double counted 1.9 billion in our early estimates.</p> <p>4       I can't recall precisely which version of</p> <p>5       estimates would have had that double counting in but I do</p> <p>6       remember, as I have said before I think, that we had a lot</p> <p>7       of numbered bounced up and numbers bounced down as we got</p> <p>8       new and better data.</p> <p>9       Q. And then after that Rich Ricci writes to</p> <p>10      you cc-ing Gerard LaRocca: "Gerard, any view?"</p> <p>11      Do you see that?</p> <p>12      A. Yes.</p> <p>13      Q. Do you know whether</p> <p>14      Mr. LaRocca expressed any view on that?</p> <p>15      A. I can't recall. I think Gerard was</p> <p>16      working with the operations people, who were sort</p> <p>17      of physically looking at the assets, and so I know</p> <p>18      Rich would have reached out to him because he</p> <p>19      would have had a closer understanding of were</p> <p>20      these double counted or not, et cetera, but I am</p> <p>21      not aware of any response from Gerard.</p> <p>22      Q. I have handed you what has already been</p> <p>23      marked as Exhibit 85B. This has already been</p> <p>24      marked. As you see there is a 2-page e-mail cover</p> <p>25      sheet and then a lengthy attachment. The first</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       page of the attachment marked number 1, ending in</p> <p>3       Bates number 4398, you will see is entitled</p> <p>4       "Lehman Brothers/Barelays APA lead sheet". Take</p> <p>5       a moment to look that over.</p> <p>6       MR. HUME: Can you just look at the ...</p> <p>7       A. This is an Alvarez &amp; Marsal document?</p> <p>8       Q. It was e-mailed by somebody at Alvarez &amp;</p> <p>9       Marsal. That does not necessarily mean that they</p> <p>10      created everything in the attachment.</p> <p>11      A. You wanted me to look at page 1 of the</p> <p>12      attached document?</p> <p>13      Q. Yes. Feel free to look at more,</p> <p>14      obviously.</p> <p>15      A. Yes.</p> <p>16      Q. First of all, have you seen that page</p> <p>17      before?</p> <p>18      A. I have never seen this page before, no.</p> <p>19      Q. You will see at the top it says:</p> <p>20      "Securities transferred under Barelays repo</p> <p>21      agreement (APA schedule A)", and lists some</p> <p>22      figures totaling a little over \$44 billion. Then</p> <p>23      it has: "Unenumerated box 'as of Sunday 9/21/08</p> <p>24      (aka Clearance Boxes) (APA schedule B)".</p> <p>25      Now, this 44.1 is slightly different from the</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       44.88 that we were just looking at on that e-mail Exhibit</p> <p>3       209, but as you will see this APA lead sheet in Exhibit 85B</p> <p>4       has broken out schedule A and schedule B with separate</p> <p>5       numbers. Do you know whether any of the assets listed there</p> <p>6       under schedule B are also within that total for schedule A?</p> <p>7       MR. HUME: Objection, lacks foundation.</p> <p>8       A. I have never seen these schedules</p> <p>9       before. At this time, the start of this e-mail</p> <p>10      chain, Martin's schedule, which I said I didn't</p> <p>11      recognize, of acquired assets, these were all</p> <p>12      Lehman schedules. I have no knowledge of what was</p> <p>13      in them or what was not in them.</p> <p>14      Q. If you look at page 2, the footnote A:</p> <p>15      "Securities transferred under Barelays repo</p> <p>16      agreement", do you see the bracket says: "Source</p> <p>17      file Barelays financing collateral list". So I am</p> <p>18      just -- that does not mean you have seen it. I</p> <p>19      wanted to bring your attention to maybe</p> <p>20      Barelays --</p> <p>21      A. I have no idea about Barclays financing</p> <p>22      collateral list, Barclays ops. I am not clear</p> <p>23      what this is purporting to be or what it has</p> <p>24      pulled together to tell you the truth.</p> <p>25      Q. On the first page under schedule A is it</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 fair to say you don't know whose marks those are?</p> <p>3       A. Definitely fair to say I don't know</p> <p>4 whose marks they are. I suppose my assumption</p> <p>5 would be that these are definitely not marks which</p> <p>6 are anything to do with Barclays though, but I</p> <p>7 don't know if that is correct.</p> <p>8       Q. If you look a little further down on</p> <p>9 that same page, do you see a reference to "Friday</p> <p>10 9/26 transfer"? Do you see that?</p> <p>11       A. Yes.</p> <p>12       Q. Do you know if there were transfers on</p> <p>13 9/26?</p> <p>14       A. I think I was asked before. I was in</p> <p>15 London at that time and operational -- when stuff</p> <p>16 moved, I have no knowledge of any transfers when</p> <p>17 they happened. I may well have received different</p> <p>18 e-mails on different things but I have no</p> <p>19 recollection.</p> <p>20       (Exhibit 373A marked for identification)</p> <p>21       Q. I have just handed you what has been</p> <p>22 marked as Exhibit 373A, a one page of two e-mails.</p> <p>23 The first one chronologically is from you to John</p> <p>24 Rodefald, Monday September 22. Subject: "Have we</p> <p>25 moved the 1.9 billion dollars yet?" Then there is</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 no text to that e-mail. What was the 1.9 billion</p> <p>3 you were asking about there?</p> <p>4       A. I can't recall, but my assumption would</p> <p>5 be it was the same 1.9 billion which is referred</p> <p>6 to in the other e-mail, so the assets left in the</p> <p>7 box. That would be my assumption but I can't</p> <p>8 recall if that is what it was.</p> <p>9       Q. When you say "the box", which box is</p> <p>10 that?</p> <p>11       A. Sorry, I am just reading from this other</p> <p>12 e-mail, but in terms of which box I would not know</p> <p>13 those details.</p> <p>14       Q. Do you know whether that was a box at</p> <p>15 DTC?</p> <p>16       A. I wouldn't know.</p> <p>17       Q. Do you know what prompted you to ask</p> <p>18 whether the 1.9 billion had moved?</p> <p>19       A. I suspect someone asked me the question</p> <p>20 and I asked the question to John Rodefald to find</p> <p>21 out, but I can't remember who did that, but</p> <p>22 I suspect that is why.</p> <p>23       Q. And then John Rodefald replies with</p> <p>24 three sentences. The last one is: "Some of the</p> <p>25 1.9 moved to us on Friday". Do you know if that</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 is correct?</p> <p>3       A. No, I don't know if that is correct.</p> <p>4       Q. So I take it you would not know how much</p> <p>5 moved on Friday?</p> <p>6       A. I wouldn't, I am afraid.</p> <p>7       (Exhibit 374A marked for identification)</p> <p>8       Q. I am handing you what has been marked</p> <p>9 Exhibit 374A. It is a very short e-mail. Again,</p> <p>10 this one does not have any Bates numbers but I</p> <p>11 believe this was part of a Barclays production.</p> <p>12       MR. HUME: Do you have any idea why it</p> <p>13 doesn't have a Bates number?</p> <p>14       MR. WOOD: I don't know. I don't know</p> <p>15 if that is a problem on our end in terms of</p> <p>16 printing or if it came across that way. I did</p> <p>17 have an associate check last night and she said</p> <p>18 she believed it was part of the production.</p> <p>19       MR. HUME: I note that the subject is</p> <p>20 "BS".</p> <p>21       MR. WOOD: You will see this is an</p> <p>22 e-mail from you to Gary Romain, Tuesday,</p> <p>23 September 23. Mr. Hume points out the subject is</p> <p>24 "BS", which I am hoping refers to box securities.</p> <p>25 The e-mail text says:</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 "Box securities worth 1.5 and exchange</p> <p>3 traded zero and maybe some upside - may need</p> <p>4 a provision".</p> <p>5       Do you know what you were referring to</p> <p>6 by the box securities?</p> <p>7       A. No. Again, rather like the earlier</p> <p>8 e-mail, it feels like I was hearing from people</p> <p>9 sort of sound bites of this and that, and I was</p> <p>10 just trying to make sure Gary Romain had all the</p> <p>11 information I had, so I was trying to pass that</p> <p>12 information on to Gary. But in terms of any</p> <p>13 granular understanding of this, you know,</p> <p>14 I couldn't tell you anything else I am afraid.</p> <p>15       Q. Do you recall why the 1.5 differs from</p> <p>16 the 1.9 we were looking at earlier?</p> <p>17       A. I don't recall why.</p> <p>18       (Exhibit 375A marked for identification)</p> <p>19       Q. I have handed you what has been marked</p> <p>20 as Exhibit 375A, a one page e-mail string. The</p> <p>21 earliest chronologically is Friday September 26,</p> <p>22 the latest chronologically appears to be Monday,</p> <p>23 September 29, ending in Bates 49565. Go ahead and</p> <p>24 take a moment to look it over.</p> <p>25       A. I have looked at it.</p>

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       Q. The earliest one chronologically, the  
3       bottom e-mail is from Stephen King to you and  
4       James Walker, dated Friday, September 26.  
5       Subject: "1.93 collateral". The first sentence  
6       says:  
7       "The file containing the extra 1.9 billion  
8       has not been delivered and cannot be right because it  
9       contains some bonds which are already in the BarCap  
10      repo."  
11      First of all, do you know what the file is  
12      that he was referring to.  
13      A. No, I don't know what that is.  
14      Q. And 1.9 billion, do you know what that  
15      is?  
16      A. I presume the heading on this is free  
17      collateral, which I think is some of the  
18      collateral in boxes.  
19      Q. And do you know whether that is boxes at  
20      DTC?  
21      A. No.  
22      Q. He writes: "It contains some bonds which  
23      are already in the BarCap repo." Do you know  
24      whether that was correct?  
25      A. Sorry, my answer, you said do I know

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       MR. HUME: Objection, vague and  
3       ambiguous.  
4       A. I was going to ask you precisely what  
5       you mean by that.  
6       Q. We have spoken about the negative  
7       goodwill which was booked on the acquisition of  
8       these assets.  
9       A. Yes.  
10      Q. Where would I go in Barclays plc's  
11      accounts to see that booking?  
12      A. It was fully disclosed in the  
13      31st December 2008 accounts, and I think it is  
14      disclosed on the face of the group accounts and  
15      extensively in the notes behind that. I think if  
16      you looked at the results announcement for the end  
17      of 2008 it is disclosed there and it is disclosed  
18      in more detail in the full financial statements.  
19      Q. Were there discussions that you were  
20      party to with Barclays' auditors about that  
21      number?  
22      A. There are numerous discussions with  
23      Barclays' auditors, who spent some time  
24      extensively auditing all the components, the  
25      opening balance sheet, the valuations on the

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       whether it is boxes at DTC and I said "no". I  
3       didn't mean no, it was not at DTC. For clarity,  
4       I meant no, I don't know where it is.  
5       Q. I understand.  
6       A. Sorry, what was your question?  
7       Q. Looking at the end of that first  
8       sentence of the earliest e-mail, where it says:  
9       "It contains some bonds which are already in the  
10      BarCap repo", and it appears to refer to the  
11      1.9 billion, do you know if that statement is  
12      correct?  
13      MR. HUME: Objection, lacks foundation.  
14      A. Again, I don't know whether that  
15      statement is correct.  
16      MR. WOOD : That is all I have. Thank  
17      you.  
18      CROSS-EXAMINATION BY MR. BUNTING:  
19      MR. BUNTING: I can be fairly brief. I  
20      am Matthew Bunting from Quinn, Emanuel, Urquhart,  
21      Oliver & Hedges for the Creditors Committee. I  
22      wanted to touch very, very briefly on the negative  
23      goodwill. Could you just explain for me in  
24      summary how that has been treated in Barclays'  
25      accounts to date?

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1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
2       opening balance sheet and all the components of  
3       the opening balance sheet, the assets and the  
4       liabilities.  
5       Q. Did you meet with them?  
6       A. Yes, I have extensive meetings with them  
7       and the meetings I have with them, that was one of  
8       the agenda topics which we discussed.  
9       Q. How did you describe to them, can you  
10      recall, the negative goodwill concept?  
11      A. I am not sure if there is a concept  
12      described. I think what we talked about was the  
13      opening balance sheet, and the opening balance  
14      sheet shows all the assets and the liabilities,  
15      and I think as I said before the balancing figure  
16      on any acquisition, which is either goodwill or  
17      negative goodwill, so we discussed the opening  
18      balance sheet. I don't remember any conceptual  
19      discussions.  
20      Q. Did they accept your calculations?  
21      A. They did all the work of auditing all  
22      the detailed components of those calculations, and  
23      in terms of the financial statements we produced  
24      were audited and unqualified, so yes.  
25      Q. Moving on, you said earlier on this

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<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 morning that what we have described today as</p> <p>3 Lehman three was a very different deal to Lehman</p> <p>4 two?</p> <p>5 A. Yes.</p> <p>6 Q. You also mentioned that at some time, at</p> <p>7 some points during the week there were discussions</p> <p>8 with the FSA that you were aware of. Is that</p> <p>9 right?</p> <p>10 A. During which week?</p> <p>11 Q. During the week starting 14th September,</p> <p>12 the week in which Lehman two became Lehman three.</p> <p>13 A. I think we talked about discussions with</p> <p>14 the FSA about a meeting the subsequent week is my</p> <p>15 recollection, from what we talked about.</p> <p>16 Q. Were there meetings with the FSA during</p> <p>17 that week of Lehman two becoming Lehman three?</p> <p>18 A. I can't recall, because for most of that</p> <p>19 week I was in New York and for some of that week I</p> <p>20 was in London. I was not involved in any myself.</p> <p>21 Barclays has fairly continuous liaison and</p> <p>22 dialogue with the FSA so I think there probably</p> <p>23 was but I can't recall.</p> <p>24 Q. Would you have attended any meetings</p> <p>25 that occurred with the FSA?</p>	<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. As I said, I was in New York for some of</p> <p>3 that time and I didn't attend any meetings.</p> <p>4 I attend some meetings with the FSA and not other</p> <p>5 meetings. It really depends what the topic is and</p> <p>6 who we are talking to at the FSA.</p> <p>7 Q. Just to clarify on the move, your travel</p> <p>8 back from New York, what was the reason for coming</p> <p>9 back from New York that week, on the Wednesday?</p> <p>10 A. I can't actually recall, apart from I</p> <p>11 had left on a hurry on the Friday to go to New</p> <p>12 York and I am not sure even if I had sufficient</p> <p>13 clothes, so it may have been practical or boring</p> <p>14 reasons, but I also I suppose at the time I left,</p> <p>15 having done the Lehman two transaction, I think at</p> <p>16 the time we believed we had done the transaction</p> <p>17 and it would just go through. So when I left we</p> <p>18 had not -- or when I left some of the problems had</p> <p>19 not started arising.</p> <p>20 Q. Could I ask one question about an</p> <p>21 exhibit we looked at earlier, which I think is</p> <p>22 Exhibit 362A, a single page e-mail about an inch</p> <p>23 and a half down the stack.</p> <p>24 A. Yes.</p> <p>25 Q. As discussed earlier, the first e-mail</p>
Page 168	Page 169
<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 in that chain is from James Trevelyan, asking for</p> <p>3 an understanding of how the negative goodwill</p> <p>4 works?</p> <p>5 A. Yes.</p> <p>6 Q. And you respond by saying that this is</p> <p>7 "the official line".</p> <p>8 A. Yes.</p> <p>9 MR. HUME: Objection.</p> <p>10 Q. Your e-mail and reply states that the</p> <p>11 official line is as follows.</p> <p>12 A. No, it is not a reply to James.</p> <p>13 Q. Okay.</p> <p>14 A. I forward this e-mail to Rich.</p> <p>15 Q. Were there other lines?</p> <p>16 A. There was a lot of confusion around the</p> <p>17 deal and a lot of numbers changing. You will have</p> <p>18 seen from some of the equities and some of the</p> <p>19 other e-mails that a lot of people were saying how</p> <p>20 does this work and how does that work, and there</p> <p>21 were not any other lines. What I was trying to do</p> <p>22 is just to make sure that Rich and I had the same</p> <p>23 clear understanding so that we didn't harbor any</p> <p>24 more confusion around the organization.</p> <p>25 Q. So was it your --</p>	<p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. It was my understanding.</p> <p>3 Q. Was it your role to determine the</p> <p>4 official line?</p> <p>5 MR. HUME: Objection, vague and</p> <p>6 ambiguous.</p> <p>7 A. I am not quite sure what that means, but</p> <p>8 just in terms of explaining the transaction,</p> <p>9 Mr. Ricci and myself were the two main people</p> <p>10 involved. So in terms of how did I look at or</p> <p>11 understand some of these things, I wanted to make</p> <p>12 sure he understood that as well.</p> <p>13 Q. Finally I want to show you a very short</p> <p>14 e-mail, which should be marked 376A.</p> <p>15 (Exhibit 376A marked for identification)</p> <p>16 This is an e-mail from you to Rich Ricci</p> <p>17 consisting of no more than four words: "Careful</p> <p>18 about bankruptcy courts". I was wondering if you</p> <p>19 could provide us with any context for this e-mail?</p> <p>20 A. I can't recall I am afraid.</p> <p>21 Q. You don't recall seeing the e-mail?</p> <p>22 A. No, I don't recall sending it and I</p> <p>23 don't recall what it was about either.</p> <p>24 Q. Had you had any dealings with bankruptcy</p> <p>25 courts in previous --</p>

<p style="text-align: right;">Page 170</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. I have not had any dealings with</p> <p>3 bankruptcy courts.</p> <p>4 MR. BUNTING: Thank you.</p> <p>5 MR. WOOD: If I can have just one minute</p> <p>6 I may have a couple more questions.</p> <p>7 (A short break)</p> <p>8 FURTHER CROSS-EXAMINATION BY MR. WOOD:</p> <p>9 MR. WOOD: A few more questions,</p> <p>10 Mr. Clackson. If you can take another look at</p> <p>11 Exhibit 376A.</p> <p>12 A. Yes.</p> <p>13 Q. Again, that is the e-mail from you to</p> <p>14 Rich Ricci, where you write: "Careful about</p> <p>15 bankruptcy courts", dated Wednesday, September 17.</p> <p>16 Did you go to the bankruptcy court at all?</p> <p>17 A. No, I didn't.</p> <p>18 Q. Do you know whether Rich Ricci did?</p> <p>19 A. I don't know.</p> <p>20 Q. I am going to hand you what has</p> <p>21 previously been marked as Exhibit 22. Do you</p> <p>22 recognize that document?</p> <p>23 A. It looks like a full year results</p> <p>24 announcement for Barclays plc.</p> <p>25 Q. For 2008?</p>	<p style="text-align: right;">Page 171</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 A. For 2008, yes.</p> <p>3 Q. And you worked on this document, did you</p> <p>4 not?</p> <p>5 A. Yes.</p> <p>6 Q. What was your responsibility with regard</p> <p>7 to this document?</p> <p>8 A. I have responsibility for the pieces</p> <p>9 which relate to Barclays Capital in the document</p> <p>10 and actually the pieces which relate to Barclays</p> <p>11 worth as well in this document.</p> <p>12 Q. Can you take a look at page 95. You</p> <p>13 will see a heading number 11, "Acquisitions".</p> <p>14 A. Yes.</p> <p>15 Q. Did you work on that section?</p> <p>16 A. Yes, my staff would have worked on this</p> <p>17 section, yes.</p> <p>18 Q. If you would like to pause to take</p> <p>19 a moment to look it over, that would be fine.</p> <p>20 A. Sure. Yes.</p> <p>21 Q. You will see the second paragraph from</p> <p>22 the bottom of that page says:</p> <p>23 "The excess of the fair value of net assets</p> <p>24 acquired over consideration paid resulted in a 2.262 million</p> <p>25 pounds of gains on acquisitions."</p>
<p style="text-align: right;">Page 172</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. As far as you know, is that statement</p> <p>5 correct?</p> <p>6 A. Yes, as far as I know that is a correct</p> <p>7 statement.</p> <p>8 Q. Do you know whether that figure includes</p> <p>9 any assets held in Lehman's clearance box at DTC?</p> <p>10 A. I think we discussed this before. In</p> <p>11 the June financial statements it tells you the</p> <p>12 total amount of assets which are included in the</p> <p>13 gain which have not yet been delivered. I think</p> <p>14 I said before when we looked at that I didn't have</p> <p>15 the exact split of the numbers of what was</p> <p>16 offsetting there. I think the assets held in</p> <p>17 clearance boxes at DTC are some of those but I</p> <p>18 don't know. I could not quantify the amount.</p> <p>19 Q. Just to be clear, when you say some of</p> <p>20 those, you mean some of the 2.262 billion?</p> <p>21 A. Some of those assets which have not been</p> <p>22 received which are included in the June financial</p> <p>23 results, which was Exhibit 371A, and as it said in</p> <p>24 Exhibit 371A, that we had recognized this gain</p> <p>25 included a number -- I can confirm the number if</p>	<p style="text-align: right;">Page 173</p> <p>1 <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2 you want on note 15, page 57 of that exhibit, it</p> <p>3 says in the second paragraph, second sentence of</p> <p>4 the second paragraph: "Approximately 1.8 billion</p> <p>5 of these assets were recognized as part of the</p> <p>6 initial accounting for the acquisition."</p> <p>7 So if those assets were recognized as part of the</p> <p>8 initial accounting they would have been included in the</p> <p>9 computation of that gain.</p> <p>10 Q. So that the 2.262 billion of gain in</p> <p>11 Exhibit 22, you say that that includes 1.8 billion</p> <p>12 pounds of assets that had not been acquired yet?</p> <p>13 A. This is as at 30th June, so 1.8 billion</p> <p>14 of assets, including 1.8 billion of assets had not</p> <p>15 been acquired as of 30 June.</p> <p>16 Q. So would it be fair to say that if 1.8</p> <p>17 billion pounds had not been provided as</p> <p>18 of June 30, 2009, that this figure in Exhibit 22,</p> <p>19 which is for 2008, that at least 1.8 billion, if</p> <p>20 not more of that --</p> <p>21 A. Would not have been received.</p> <p>22 Q. -- had not been received as of that</p> <p>23 date?</p> <p>24 A. That would be correct, yes.</p> <p>25 Q. But do you know whether or not any of</p>

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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       the clearance box assets at DTC were included in</p> <p>3       that figure that had not been received but were</p> <p>4       included in this number?</p> <p>5       A. To repeat what I said, I think some of</p> <p>6       those assets are included in that number. I don't</p> <p>7       know precisely how much and I can't recall</p> <p>8       precisely how much.</p> <p>9       Q. Do you know whether any assets held</p> <p>10      pursuant to rule 15c3 were included in that?</p> <p>11      A. I know they were included in that</p> <p>12      number.</p> <p>13      Q. They were included?</p> <p>14      A. Yes, I know definitely.</p> <p>15      Q. What was the value of assets included?</p> <p>16      Just to be clear on that, what was the value of</p> <p>17      15c3 assets that were included?</p> <p>18      A. The value which was included there was</p> <p>19      the full amount of claim. I can't remember</p> <p>20      precisely how much that was.</p> <p>21      Q. Do you know whether it was \$769 million?</p> <p>22      A. That sounds to me like the correct</p> <p>23      number.</p> <p>24      Q. Do you know whether any margin held at</p> <p>25      the OCC is included in that 2.262 billion pounds</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       of gain?</p> <p>3       MR. HUME: Object to the vagueness of</p> <p>4       "included" in that number. I think I know what</p> <p>5       you mean. Included in all the numbers that result</p> <p>6       in that number? I am sorry, I am not trying to</p> <p>7       make a speaking objection. I am trying to</p> <p>8       clarify. Is that what you mean?</p> <p>9       MR. WOOD: Yes.</p> <p>10      A. I think there are some other exhibits</p> <p>11      which showed the composition of the acquisition</p> <p>12      balance sheet and the assets in the composition</p> <p>13      balance sheet which I think set out what is</p> <p>14      included in there. I feel like I am speculating</p> <p>15      saying what do I think is included and what is</p> <p>16      not.</p> <p>17      Q. We have seen a lot of different balance</p> <p>18      sheets so I am not sure exactly which one. The</p> <p>19      figure we see here on page 95 of Exhibit 22 --</p> <p>20      A. I think there was -- let me find the</p> <p>21      exhibit for you. I think Exhibit 88B.</p> <p>22      MR. HUME: 88B is the one that had the</p> <p>23      one page redacted and has a clerical error.</p> <p>24      MR. WOOD: The clerical error is not</p> <p>25      implicated by what we are talking about.</p>
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<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       MR. HUME: It may be.</p> <p>3       MR. WOOD: It may be?</p> <p>4       MR. HUME: I have the corrected version</p> <p>5       if you want it.</p> <p>6       A. Exhibit 88B, which reconciles --</p> <p>7       MR. WOOD: Can I take a look at the</p> <p>8       corrected version?</p> <p>9       MR. HUME: Yes, sorry it is not stapled.</p> <p>10      MR. WOOD: That is fine.</p> <p>11      A. Page 3 of that exhibit, I think, breaks</p> <p>12      down the different assets.</p> <p>13      Q. Are you looking at the uncorrected</p> <p>14      version, the original version?</p> <p>15      A. Yes. On page 3 of the exhibit I think</p> <p>16      it breaks down the -- balance is included in that</p> <p>17      acquisition balance sheet.</p> <p>18      Q. Before we go any further, I just want to</p> <p>19      ask a couple of questions. Exhibit 88B, at the</p> <p>20      top of page 2 of the uncorrected version, the two</p> <p>21      versions are formatted differently. The top of</p> <p>22      page 2 of the uncorrected, it says: "Gain on</p> <p>23      acquisition 2,262." Do you read that to be the</p> <p>24      2.262 billion pounds gain which is then reflected</p> <p>25      on page 95 of Exhibit 22?</p>	<p>1       <b>HIGHLY CONFIDENTIAL - PATRICK CLACKSON</b></p> <p>2       A. Yes, so I am assuming this is the final</p> <p>3       version. As I said beforehand, I don't know what</p> <p>4       the details are of the final version, but because</p> <p>5       the total is the same total I am assuming this is</p> <p>6       the final version. Talk to Gary Romain, he will</p> <p>7       be able to confirm the final version.</p> <p>8       Q. Looking at that document, are you able</p> <p>9       to answer whether or not any margin held at the</p> <p>10      OCC is included in the 2.262 billion pounds gain?</p> <p>11      A. Sorry, having led you here I am not sure</p> <p>12      if there is sufficient detail for me to be able to</p> <p>13      aver to that.</p> <p>14      Q. If you look at page 3 of the uncorrected</p> <p>15      version, line 18 is "OCC customer and clearing</p> <p>16      margin", and then there is a zero.</p> <p>17      MR. HUME: I believe that may be</p> <p>18      a clerical error. If you want to take a moment go</p> <p>19      off the record and look at this.</p> <p>20      MR. WOOD: Yes, that would be good.</p> <p>21      MR. HUME: Do you want to mark it?</p> <p>22      Mr. Wood is going to mark an exhibit which I just</p> <p>23      gave him that was printed out. There was</p> <p>24      a correction to a clerical error in the document</p> <p>25      marked Exhibit 88B, which corrected version was</p>

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<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 produced to all the parties a couple of weeks ago,</p> <p>3 and it has a different Bates number. I have had</p> <p>4 a version of that e-mailed here and printed by an</p> <p>5 assistant and I just don't know if the complete</p> <p>6 thing has been printed. I think as we look</p> <p>7 through it we will be able to tell. I assume it</p> <p>8 has. So then you can proceed to use that</p> <p>9 document.</p> <p>10 (Exhibit 377A marked for identification)</p> <p>11 Q. It may be cumbersome but I am going to</p> <p>12 back up and make the record clear. You now have</p> <p>13 Exhibit 377A in front of you?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know what this document is?</p> <p>16 A. It looks like a spreadsheet breaking out</p> <p>17 or analyzing the acquisition balance sheet. It</p> <p>18 seems to reconcile to the final gain and so I</p> <p>19 think it could be the final version, but in terms</p> <p>20 of the detail I am not sure if this is the final</p> <p>21 version.</p> <p>22 Q. Was this at least a version, whether</p> <p>23 final or no --</p> <p>24 A. It is, yes.</p> <p>25 Q. -- of a document that was used to come</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 to the conclusion -- let me finish the question --</p> <p>3 was a version of this document used to reach the</p> <p>4 conclusion in Exhibit 22, which is the Barclays</p> <p>5 plc results announcement for 2008, that the excess</p> <p>6 of fair value of net assets acquired over</p> <p>7 consideration paid resulted in 2.262 million</p> <p>8 pounds of gains on acquisition?</p> <p>9 A. Yes, a version of this document, yes,</p> <p>10 would have been used for that, together with the</p> <p>11 supporting documentation behind them.</p> <p>12 Q. Having said that, can you tell from this</p> <p>13 document whether or not margin held by Lehman at</p> <p>14 the OCC was included in that 2.262 billion figure?</p> <p>15 A. If you look at page 2 of the document,</p> <p>16 on line 18, it does have a line saying: "OCC</p> <p>17 customer and clearing margin". It does not here</p> <p>18 itemize how much of that was received or not</p> <p>19 received, but it does show that OCC customer and</p> <p>20 clearing margin to that extent was included in</p> <p>21 that opening balance sheet.</p> <p>22 Q. And the amount was 530 million pounds,</p> <p>23 is that correct?</p> <p>24 A. I am just trying to read across the</p> <p>25 page. That is what it says on this document, yes.</p>
Page 180	Page 181
<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 Q. Can you tell from this document whether</p> <p>3 margin held by Lehman to secure derivatives at</p> <p>4 other exchanges is included in the 2.262 billion?</p> <p>5 A. I am not quite sure if you can from this</p> <p>6 document.</p> <p>7 Q. Leaving aside the document, do you know</p> <p>8 the answer?</p> <p>9 A. No, I can't remember the details of what</p> <p>10 we included and what we didn't include. As I said</p> <p>11 before, we included the stuff where we had clear</p> <p>12 details and evidence behind the balances in time</p> <p>13 to produce our financial statement. There were</p> <p>14 some other balances where we have equally strong</p> <p>15 legal claim over them and we have been able to</p> <p>16 quantify the balances subsequent to this which</p> <p>17 were noted in our June results but which we did</p> <p>18 not include in our acquisition gain. The exact</p> <p>19 split between those items we did not include and</p> <p>20 we did include I can't recall the details of.</p> <p>21 Q. Do you know approximately what value you</p> <p>22 did not include in the gain?</p> <p>23 A. I think if you look at note 11 of the</p> <p>24 results announcement for June, I think it is</p> <p>25 exhibit -- sorry, that is the wrong one.</p>	<p>1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2 Q. Do you mean note 15? We previously</p> <p>3 discussed note 15 of Exhibit 371A, page 57.</p> <p>4 A. Yes, sorry it was note 15, you are</p> <p>5 right. I think that shows approximately</p> <p>6 2.2 billion of assets acquired as part of the</p> <p>7 acquisition had not been received by 30 June 2009.</p> <p>8 It goes on to say 1.8 billion of these were</p> <p>9 recognized, so 400 million of the 2.2 billion had</p> <p>10 not been recognized.</p> <p>11 Q. Do you know why it was not recognized?</p> <p>12 MR. HUME: Objection, asked and</p> <p>13 answered.</p> <p>14 A. Yes, you have asked and answered it. I</p> <p>15 can repeat my answer if you want me to.</p> <p>16 Q. That would be great.</p> <p>17 A. What we reflected in our 30 June</p> <p>18 financial statement was the balances where we had</p> <p>19 received full evidence of the value and the</p> <p>20 composition of those balances, as well as having</p> <p>21 legal confirmation that they were our assets,</p> <p>22 where at 30 June -- sorry, 31 December 2008 -- and</p> <p>23 the time it took to produce the accounts, which</p> <p>24 were produced in February, where we still did not</p> <p>25 have sufficient evidence at that point in time to</p>

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<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       quantify the valuation. To account for something</p> <p>3       included, it needs to be something which you can</p> <p>4       estimate in a reliable way, so where we did not</p> <p>5       have sufficient information to estimate it in</p> <p>6       a reliable way, at that point we did not include</p> <p>7       it in our acquisition balance sheet.</p> <p>8       Subsequently to that, we have got more detail, so</p> <p>9       we now can estimate in a reliable way, and we still -- and</p> <p>10      we have the legal title to those goods, 400 million more</p> <p>11      than we included in our December numbers.</p> <p>12      Q. Looking again at Exhibit 377A, I asked</p> <p>13      you, and this is on the page that ends in Bates</p> <p>14      844, before we had the document in front of us</p> <p>15      I asked you whether the 15c3 assets were included</p> <p>16      in the 2.262 billion pounds, and is that reflected</p> <p>17      in line 15?</p> <p>18      A. If you look at page 2 of Exhibit 377A,</p> <p>19      you are correct, on line 15 it shows 15c3 assets</p> <p>20      and \$770 million. It was one of the assets which</p> <p>21      was included in the opening balance sheet.</p> <p>22      Q. Can you tell on this page whether or not</p> <p>23      clearance box assets held at DTC are included?</p> <p>24      A. I am not sure if I can tell from this</p> <p>25      schedule. As I said before, I do believe some of</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       them are included but I don't think it is</p> <p>3       something which is separately identified on this</p> <p>4       schedule.</p> <p>5       Q. Could it be included in line 11,</p> <p>6       additional unenumerated assets?</p> <p>7       A. It could be included in the schedule.</p> <p>8       It could be in line 11, I am not sure.</p> <p>9       MR. WOOD: I don't have anything</p> <p>10      further.</p> <p>11      MR. TAMBE: Nothing, thank you.</p> <p>12      MR. WOOD: Thank you for your time.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 184	Page 185
<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2</p> <p>3       CERTIFICATE OF DEPONENT</p> <p>4</p> <p>5       I, Patrick Clackson, hereby certify that I have</p> <p>6       read the foregoing pages, numbered 1 through 186,</p> <p>7       of my deposition of testimony taken in these</p> <p>8       proceedings on Friday, 4 September, 2009, and,</p> <p>9       with the exception of the changes listed on the</p> <p>10      next page and/or corrections, if any, find them to</p> <p>11      be a true and accurate transcription thereof.</p> <p>12</p> <p>13      Signed: .....</p> <p>14      Name: Patrick Clackson</p> <p>15      Date: .....</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1       HIGHLY CONFIDENTIAL - PATRICK CLACKSON</p> <p>2       CERTIFICATE OF COURT REPORTER</p> <p>3</p> <p>4       I, AILSA WILLIAMS, an Accredited LiveNote Reporter</p> <p>5       with European Deposition Services, London,</p> <p>6       England, hereby certify that the testimony of the</p> <p>7       witness Patrick Clackson in the foregoing</p> <p>8       transcript, numbered pages 1 through 186, taken on</p> <p>9       Friday, 4 September, 2009 was recorded by me in</p> <p>10      machine shorthand and was thereafter transcribed</p> <p>11      by me; and that the foregoing transcript is a true</p> <p>12      and accurate verbatim record of the said</p> <p>13      testimony.</p> <p>14</p> <p>15      I further certify that I am not a relative,</p> <p>16      employee, counsel or financially involved with any</p> <p>17      of the parties to the within cause, nor am I an</p> <p>18      employee or relative of any counsel for the</p> <p>19      parties, nor am I in any way interested in the</p> <p>20      outcome of the within cause.</p> <p>21</p> <p>22      Signed: .....</p> <p>23      AILSA WILLIAMS</p> <p>24      Dated: 9/4/2009</p> <p>25</p>



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HIGHLY CONFIDENTIAL - PATRICK CLACKSON

E R R A T A

Deposition of Patrick Clackson

Page/Line No.	Description	Reason for change
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Signed: .....

Name: Patrick Clackson

Date: .....

# BCI EXHIBIT

60

HIGHLY CONFIDENTIAL - J. COGLAN  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.  
-----X

\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF JOHN COGLAN

New York, New York

August 13, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24122

Page 2	Page 3
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2             August 13, 2009</p> <p>3             9:30 a.m.</p> <p>4</p> <p>5       HIGHLY CONFIDENTIAL deposition</p> <p>6       of JOHN COGHLAN, held at Jones Day</p> <p>7       LLP, 222 East 41st Street, LLP, New</p> <p>8       York, New York, before Kathy S.</p> <p>9       Klepfer, a Registered Professional</p> <p>10       Reporter, Registered Merit Reporter,</p> <p>11       Certified Realtime Reporter, Certified</p> <p>12       Livenote Reporter, and Notary Public</p> <p>13       of the State of New York.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2</p> <p>3       A P P E A R A N C E S:</p> <p>4</p> <p>5       JONES DAY, LLP</p> <p>6       Attorneys for Lehman Brothers, Inc.</p> <p>7       222 East 41st Street</p> <p>8       New York, New York 10017-6702</p> <p>9       BY: WILLIAM J. HINE, ESQ.</p> <p>10       GEORGE E. SPENCER, ESQ.</p> <p>11</p> <p>12       BOIES, SCHILLER &amp; FLEXNER, LLP</p> <p>13       Attorneys for Barclays</p> <p>14       575 Lexington Avenue - 7th Floor</p> <p>15       New York, New York 10022</p> <p>16       BY: JACK G. STERN, ESQ.</p> <p>17</p> <p>18       SCARING &amp; BRISSENDEN, PLLC</p> <p>19       Attorneys for the Witness</p> <p>20       666 Old County Road</p> <p>21       Ste. 501</p> <p>22       Garden City, New York 11530-2004</p> <p>23       BY: STEPHEN P. SCARING, ESQ.</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2</p> <p>3       A P P E A R A N C E S: (Cont'd.)</p> <p>4</p> <p>5       QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP</p> <p>6       Attorneys for the Creditors Committee</p> <p>7       51 Madison Avenue</p> <p>8       22nd Floor</p> <p>9       New York, New York 10010</p> <p>10       BY: ERIC M. KAY, ESQ.</p> <p>11</p> <p>12       JENNER &amp; BLOCK, LLP</p> <p>13       Attorneys for the Examiner</p> <p>14       330 N. Wabash Avenue</p> <p>15       Chicago, Illinois 60611-7603</p> <p>16       BY: DAVID C. LAYDEN, ESQ.</p> <p>17</p> <p>18       HUGHES, HUBBARD &amp; REED, LLP</p> <p>19       Attorneys for the SIPA Trustee</p> <p>20       One Battery Park Plaza</p> <p>21       New York, New York 10004-1482</p> <p>22       BY: NEIL J. OXFORD, ESQ.</p> <p>23</p> <p>24       Also Present:</p> <p>25       RAJESH ANKALKOTI, Alvarez &amp; Marsal</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       JOHN COGHLAN, called as a</p> <p>3       witness, having been duly sworn by a Notary</p> <p>4       Public, was examined and testified as</p> <p>5       follows:</p> <p>6       EXAMINATION BY</p> <p>7       MR. HINE:</p> <p>8       Q. Good morning, Mr. Coghlan.</p> <p>9       A. Good morning.</p> <p>10       Q. We met briefly off the record just</p> <p>11       before this, but my name is Bill Hine. I'm from</p> <p>12       the firm of Jones Day and we are special counsel</p> <p>13       to the Lehman Brothers Holdings, Inc. in</p> <p>14       connection with the pending bankruptcy</p> <p>15       proceedings. This deposition is to take some</p> <p>16       discovery in connection with that effort.</p> <p>17       Have you ever been deposed before?</p> <p>18       A. I have.</p> <p>19       Q. You have not?</p> <p>20       A. I have.</p> <p>21       Q. You have, okay. So you know the</p> <p>22       drill, generally. I'm going to ask you some</p> <p>23       questions.</p> <p>24       A. Uh-huh.</p> <p>25       Q. You're going to give me answers. On</p>

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 occasion, your counsel might state objections  
3 for the record or to instruct me that he thinks  
4 my questions are unclear or something wrong with  
5 my question. That doesn't relieve you of the  
6 obligation to answer the question.

7 A. Uh-huh.

8 Q. It just gives me a chance to correct  
9 it.

10 In that vein, throughout the course of  
11 the day, undoubtedly I will misuse a word or  
12 some technical term or some acronym that you  
13 folks use every day in your business, so I would  
14 ask you to just correct me or ask me to  
15 clarify --

16 A. Uh-huh.

17 Q. -- any questions you think I might not  
18 be getting the concept or might be asking an  
19 unclear question. I think it's in everyone's  
20 interests to have clear questions so you can  
21 answer them.

22 MR. STERN: Let me just point out the  
23 reporter is noting your "uh-hum" comments.  
24 So going forward, "yes" or "no."

25 Q. Okay. The reporter takes down -- can

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 only take down verbal answers, so when you nod  
3 your head, she can't note that.

4 Can we start off briefly with your  
5 previous employment at Lehman Brothers? Were  
6 you an employee of LBI?

7 A. I was.

8 Q. Okay. And could you tell me what your  
9 last position you held at LBI was.

10 A. I worked in the prime broker. I was a  
11 managing director and I was responsible for the  
12 secured financing of the firm.

13 Q. When you say "prime broker," is  
14 that -- I see references in some of the  
15 documents to Prime Services?

16 A. Prime Services, yes.

17 Q. Can you just explain to me what that  
18 is?

19 A. Prime Services has several businesses  
20 within it. From a -- the primary businesses or  
21 the major businesses are financing businesses,  
22 both in fixed income and equities. There is a  
23 futures business resides in prime broker, where  
24 there are fees for execution and settlement.  
25 There is other execution and settlement activity

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 that goes on in prime brokerage relative to  
3 equity executions as well. So the piece I was  
4 responsible for was the financing piece within  
5 the prime brokerage.

6 Q. Could you explain to me what that  
7 means?

8 A. Yes. The firm basically has two types  
9 of assets that it needs to finance on a daily  
10 basis. It has assets that it owns as principal  
11 that we have bought and put into our position.

12 Q. Okay.

13 A. Those trading decisions and those  
14 positions are managed outside of the prime  
15 brokerage business. And within the prime  
16 brokerage business there is a financing business  
17 which basically does lending and borrowing of  
18 money, collateralized normally by securities,  
19 with the objective of making a spread in between  
20 the borrowing and the lending on the money. So  
21 that's the activity that I manage.

22 Q. Okay. And you have a team of folks  
23 that work for you in that activity, I take it?

24 A. Yes, I do.

25 Q. And does that activity entail use of

Page 9

1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 repo transactions or repurchase transactions?

3 A. It does.

4 Q. So if we use the term "repo," you will  
5 understand what that means throughout this  
6 deposition?

7 A. Yes.

8 Q. And can you explain to me generally  
9 what a repo transaction is?

10 A. Repo transaction is when I either --  
11 well, when I lend money to a third party, I  
12 normally do that by lending the money and they  
13 will give me some sort of collateral to secure  
14 that loan.

15 Q. Right.

16 A. Normally, the collateral that they  
17 would post are relatively liquid marketable  
18 securities. Normally, I'm taking more  
19 collateral than I'm lending money so I have some  
20 sort of over collateralization protection, and  
21 so that would be one leg of the transaction.

22 Once I lend that money, I have to take  
23 those securities and repledge them to someone  
24 else who will give me money. And so that is the  
25 basic dynamic of a repo transaction.

Page 10	Page 11
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. And Lehman makes money by the</p> <p>3 difference in --</p> <p>4       A. Where I borrow the money and when I</p> <p>5 loan the money.</p> <p>6       MR. STERN: Wait. He has to finish</p> <p>7 the question. Let's let him finish the</p> <p>8 question.</p> <p>9       Q. I just want to understand. The goal</p> <p>10 of your department is to make money on these</p> <p>11 seemingly opposite transactions, right?</p> <p>12       A. That's one of the objectives of the</p> <p>13 department, yes.</p> <p>14       Q. So you say you were managing director</p> <p>15 of this department?</p> <p>16       A. Yes.</p> <p>17       Q. Okay. And how long have you held that</p> <p>18 position?</p> <p>19       A. In that department, I believe it was</p> <p>20 four years.</p> <p>21       Q. So roughly since 2004?</p> <p>22       A. I believe that's the date, yes.</p> <p>23       Q. And what was your position before</p> <p>24 that?</p> <p>25       A. My position immediately before that is</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 I had a similar position running just the fixed</p> <p>3 income piece of repo.</p> <p>4       Q. And how long --</p> <p>5       A. Whereas this position included both</p> <p>6 fixed income, financing and equity financing.</p> <p>7       Q. I gotcha. And how long were you in</p> <p>8 charge of the fixed income piece of repo?</p> <p>9       A. Probably since 1998, I believe.</p> <p>10       Q. Prior to that?</p> <p>11       A. What was I doing before that?</p> <p>12       Q. Yes.</p> <p>13       A. Before that, I was running the</p> <p>14 Investment Grade and High Grade Division for</p> <p>15 Lehman.</p> <p>16       Q. Did that involve repo transactions as</p> <p>17 well?</p> <p>18       A. It did not.</p> <p>19       Q. How long have you worked for Lehman?</p> <p>20       A. I was there 27 years.</p> <p>21       Q. Okay, you started -- do you recall</p> <p>22 what year you started?</p> <p>23       A. 1981.</p> <p>24       Q. Okay. The two positions that you just</p> <p>25 discussed with me, are those the only positions</p>
Page 12	Page 13
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 you held that involved repo transactions?</p> <p>3       A. Yes.</p> <p>4       Q. Is it fair to say --</p> <p>5       A. Well, let me clarify. I did have</p> <p>6 supervisory responsibility for a year of repo,</p> <p>7 but I can't recall the date.</p> <p>8       Q. Okay.</p> <p>9       A. It was in the mid '90s. So I</p> <p>10 supervised it for a period of time, moved on to</p> <p>11 a different position, and then came back in</p> <p>12 1998.</p> <p>13       Q. Fair to say you're very familiar with</p> <p>14 repo transactions?</p> <p>15       A. Yes.</p> <p>16       Q. Among the senior management team at</p> <p>17 Lehman, are you the guy they would usually go to</p> <p>18 with a question about repo transactions if</p> <p>19 something came up?</p> <p>20       A. I wouldn't be the only person because</p> <p>21 there are other people that are familiar with</p> <p>22 the repo business and there are other senior</p> <p>23 people within it, but, you know, they would</p> <p>24 obviously ask me questions at times. But not</p> <p>25 exclusively.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. Okay. Now I just want to talk about</p> <p>3 the last position you held, which is the</p> <p>4 managing director position that you described.</p> <p>5 Who did you report to in that position?</p> <p>6       A. I reported to John Wickham.</p> <p>7       Q. Anyone else?</p> <p>8       A. No.</p> <p>9       Q. And who reported directly to you?</p> <p>10       A. Who reported directly? In that</p> <p>11 position, David Lohuis, John Nicholson, John</p> <p>12 Feraca, Janet Hurley, Ian Maynard.</p> <p>13       Q. Are these folks traders?</p> <p>14       A. Yes.</p> <p>15       Q. So your department handles the trades</p> <p>16 that are involved in effecting a repo</p> <p>17 transaction, is that fair to say?</p> <p>18       A. Yes.</p> <p>19       Q. Can you explain to me the</p> <p>20 difference --</p> <p>21       A. Well, repo and stock loan. So the</p> <p>22 normal phrase for fixed income financing</p> <p>23 transactions is repo. The normal phrase for</p> <p>24 equity financing transactions is stock loan.</p> <p>25       Q. Okay.</p>

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. They both are financing transactions  
3       where we are lending money versus collateral and  
4       then relending the collateral to get the money.  
5       Q. Okay. Again, I'm not trying to  
6       mischaracterize. Is it fair to say it's  
7       generally the same mechanics of the transaction,  
8       you just call it two different things for those  
9       two different types of securities?  
10      A. Yes.  
11      Q. Can you explain to me the difference  
12      between what your department does and what Mr.  
13      Blackwell's department does as they relate to  
14      repo transactions?  
15      A. Well, I can describe what I do. What  
16      I do is, as I said, I manage all the collateral  
17      that needs to be financed both for the firm and  
18      for the financing business --  
19      Q. Okay.  
20      A. -- in a way I just described, by  
21      buying and borrowing and lending money. And,  
22      you know, the kind of the settlement of those  
23      transactions are handled by, you know, the  
24      treasury. And Alastair Blackwell has a group of  
25      operations people that work with Treasury to

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       closing of the sales transaction whereby LBI's  
3       assets were sold to Barclays?  
4       MR. STERN: Objection to the form.  
5       A. Yeah, I --  
6       Q. Do you know an exact date when you  
7       considered yourself to have become a Barclays  
8       employee?  
9       A. I do not have an exact date. I became  
10      a Barclays employee, you know, as a result of  
11      the Lehman result with Barclays.  
12      Q. Okay. And what position do you hold  
13      at Barclays now?  
14      A. I am in Prime Services business at  
15      Barclays. I'm a managing director and I run the  
16      secured financing in the Prime Brokerage.  
17      Q. Does that entail the same type of  
18      duties and responsibilities as you previously  
19      held at Lehman?  
20      A. It's similar, but not identical.  
21      Q. What's the difference?  
22      A. There were certain parts of my  
23      responsibility at Lehman that are not part of my  
24      responsibilities at Barclays.  
25      Q. Okay. And do you report to someone at

Page 15

1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       settle trades.  
3       Q. When you say "settle trades," what  
4       does that mean?  
5       A. To make sure that the securities go to  
6       where they're supposed to go and the cash goes  
7       to where it's supposed to go to, make sure all  
8       the securities and cash move to their proper  
9       locations.  
10      Q. I've heard the phrase "back office."  
11      Is that what you would consider what you just  
12      described?  
13      A. That's the phrase, yes, that would  
14      describe it, yes.  
15      Q. Does your organization that you  
16      head -- and again, I'm talking about your time  
17      at Lehman.  
18      A. Uh-huh.  
19      Q. Well, let's just take a step back.  
20      There came a time when you left  
21      Lehman; is that right?  
22      A. Yes.  
23      Q. And when was that?  
24      A. September of 2008.  
25      Q. Okay. Was it on the date of the

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       Barclays?  
3       A. I do.  
4       Q. Who is that?  
5       A. Ajay Nagpal.  
6       Q. Nagpal?  
7       A. N-A-G-P-A-L.  
8       Q. Anybody else that you directly report  
9       to?  
10      A. No.  
11      Q. And who reports to you directly at  
12      Barclays?  
13      A. Dave Lohuis, John Feraca, Janet  
14      Hurley, John Nicholson, Rich Coffin.  
15      Q. What was the last name?  
16      A. Rich Coffin, C-O-F-F-I-N.  
17      Q. Is it fair to say as a general matter  
18      your team moved from Lehman to Barclays with you  
19      still in charge of them?  
20      A. In New York, the team moved, yes.  
21      Q. Okay. I take it Barclays had an  
22      existing team elsewhere that did a similar  
23      function?  
24      A. Yes.  
25      Q. Okay.

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. Yes. They didn't take LBIE and they  
3       didn't take LBJ, so the people that are  
4       operating those seats at Barclays are the people  
5       that are operating those seats today.  
6       Q. Okay. Fair enough. Now I want to  
7       talk about your last position you held at Lehman  
8       again.  
9       Does your, the group that you managed,  
10      which I take it are a group of traders  
11      primarily, are they responsible for putting  
12      values on securities that you work with?  
13      A. In a lending relationship, we would  
14      value securities and mark the securities to  
15      market in order to determine what margin  
16      requirements are necessary.  
17      Q. So in a typical repo transaction your  
18      team would be responsible for assigning a value  
19      to the securities that were being assigned as  
20      collateral; is that right?  
21      A. Yes.  
22      Q. Okay. I understand that in most repo  
23      transactions there's someone called -- someone  
24      who serves as a custodian?  
25      A. Uh-huh.

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       counsel, which would be privileged, or your  
3       legal understanding. I'm trying to understand  
4       your business.  
5       A. Okay.  
6       Q. We'll come back to this valuation  
7       question. I just wanted to --  
8       MR. STERN: There was a pending  
9       question:  
10      Why is it necessary for you as a  
11      custodian to place values on the securities?  
12      I objected to the form, but you can answer.  
13      A. You know, what the role of a tri-party  
14      agent is is not directly my responsibility, that  
15      is managed through Treasury, and so the  
16      framework of tri-party operations, you know,  
17      does not report to me.  
18      Q. Okay.  
19      A. So I don't know if I have enough  
20      knowledge to describe that.  
21      Q. Okay. Could you explain to me the  
22      difference between a tri-party repo and the ones  
23      you were previously discussing?  
24      A. In the ones I was previously  
25      discussing, they could have settled through

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       Q. And does the custodian typically place  
3       a value on the securities as well?  
4       A. Yes.  
5       Q. Why --  
6       A. In the tri-party relationship. When  
7       they're acting on behalf of -- in a custodian  
8       capacity, when there's another counterparty  
9       involved, they would be valuing those securities  
10      on behalf of both parties.  
11      Q. Okay. Why is it necessary for you and  
12      the custodian to place values on the securities?  
13      MR. STERN: Objection to the form.  
14      I just want to make a statement so  
15      that I don't have to object repeatedly.  
16      MR. HINE: Sure.  
17      MR. STERN: And that is that Mr.  
18      Coghlan, to the best of my knowledge, is not  
19      an attorney and his testimony is concerning  
20      his business understanding of these  
21      transactions, not the legalities of them..  
22      Is that a fair --  
23      MR. HINE: Fair enough. I'm not --  
24      Q. Mr. Coghlan, I'm not trying to inquire  
25      into your -- any conversations you've had with

Page 21

1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       tri-party. In the repo market, there's  
3       basically two types of transactions that you can  
4       do.  
5       You can do a bilateral transaction  
6       where Party A and Lehman faced off together and  
7       we settle that directly. So I would send or the  
8       firm would send collateral to whoever we were  
9       instructed, the other party would send cash to  
10      where we were instructed, and that would be one  
11      way of settling the trade.  
12      Q. Okay.  
13      A. In a tri-party situation, there is a  
14      custodian appointed, for Lehman Brothers, it was  
15      Chase, and they would be responsible for  
16      settling that trade for the benefit of Lehman  
17      Brothers and the counterparty. So some trades  
18      settle bilaterally and some trades settle  
19      through the tri-party.  
20      Q. Okay. I'm going to come back to your  
21      repo experience in a minute, but I apologize for  
22      being intrusive, but I do need to ask you some  
23      questions about your compensation at both Lehman  
24      and Barclays.  
25      MR. STERN: This is designated as



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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 highly confidential.

3 THE WITNESS: Okay.

4 MR. HINE: Yes.

5 Q. Could you tell me or is it fair to say  
6 that your compensation package at Lehman  
7 consisted of a couple different elements,  
8 namely, a base salary and some form of bonus; is  
9 that right?

10 A. That's true.

11 Q. And did the bonus take both a cash and  
12 an equity form?

13 A. Yes.

14 Q. Okay. Could you tell me, if you  
15 remember, your compensation for the year 2000?  
16 And we can break it out into those three  
17 components, if you recall.

18 A. I don't recall what I got paid in  
19 2000.

20 Q. Okay. Is it fair to say the base  
21 salary portion is much smaller than the amounts  
22 that ended up being paid in bonuses generally?

23 A. Yes.

24 (Exhibit 115, a document bearing Bates  
25 Nos. BCI-EX-00077294 through 77295, marked

Page 24

1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 entitled "Compensation" which discusses a base  
3 salary. Do you see that?

4 A. Yes.

5 Q. And that says [REDACTED] per year?

6 A. Uh-huh.

7 Q. That's the base salary that Barclays  
8 promised to pay you once you went to work for  
9 them?

10 A. Yes.

11 Q. Okay. And is that the same as the  
12 base salary you previously had at Lehman?

13 A. Yes.

14 Q. And that would be through the year  
15 2008?

16 A. Yes.

17 Q. Now, I see a 2008 guaranteed cash  
18 bonus of approximately [REDACTED], do you see  
19 that?

20 A. Yes, I do.

21 Q. And what is that?

22 A. That was the bonus I was to receive if  
23 I continued employment up to February 2009.

24 Q. And did you in fact receive that  
25 bonus?

Page 23

1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 for identification, as of this date.)

3 Q. Mr. Coghlan, I'm handing you a  
4 document which I have marked as Exhibit 115,  
5 which appears to be an agreement between  
6 Barclays and yourself. It's Bates-stamped  
7 BCI-EX-00077294 through 296.

8 My first question is do you recognize  
9 this document?

10 A. Yes, I do.

11 Q. What is this?

12 A. I believe this is a document that I  
13 needed to sign as a condition of employment at  
14 Barclays.

15 Q. Is this your employment contract with  
16 Barclays?

17 A. I don't know -- I don't know the  
18 definition of an employment contract, so ...

19 Q. Well, do you consider this document to  
20 lay out the amounts that you were expected to be  
21 paid when you went to work at Barclays?

22 A. Yes.

23 Q. So let me just go through a couple of  
24 components here. As I read this first, you see  
25 an entry called -- or, third entry down is

Page 25

1 HIGHLY CONFIDENTIAL - J. COGHLAN

2 A. Yes, I did.

3 Q. Am I correct to say that that's a  
4 bonus that was paid by Barclays in connection  
5 with your work throughout the year 2008?

6 A. Yes.

7 Q. Okay. So my -- and I'm not trying to  
8 be misleading, I just want to understand. So is  
9 that the cash bonus compensation for your work  
10 at both Lehman for a portion of 2008 and  
11 Barclays for a portion of 2008?

12 A. What the rationale is around deriving  
13 that number, Lehman, that I don't know.

14 Q. Okay. Let's skip down to the next  
15 one, which says EPP -- 2008 EPP Recommendation,  
16 and it discusses a share award, 2008 share award  
17 in the amount of approximately [REDACTED], do you  
18 see that?

19 A. Yes, sir.

20 Q. And that says to be awarded no later  
21 than March 15, 2009. Do you see that?

22 A. Yes.

23 Q. Were you in fact paid that award?

24 A. Yes.

25 Q. Okay. And now do you know what that

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 was for?  
3       A. I don't understand the question.  
4       Q. Well, is that to compensate you for  
5 your work in 2008 for both Lehman and Barclays?  
6       A. Again, I don't know what the rationale  
7 was, you know, what metric was used to  
8 determine, you know, so what the -- what piece  
9 contributed from Lehman versus Barclays Capital  
10 I don't know.  
11       Q. Okay. Is that greater or lesser than  
12 the amount of stock bonus award that you would  
13 have received at Lehman or that you expected to  
14 have received at Lehman for 2008?  
15       A. I don't -- I don't know what I would  
16 have received at Lehman in 2008, so I can't  
17 benchmark it versus --  
18       Q. Okay.  
19       A. Because there was no indication of  
20 what bonuses were going to be or not be.  
21       Q. Was it the practice that at Lehman you  
22 did not learn of what your cash or stock bonus  
23 awards were going to be until the end of the  
24 year?  
25       A. Correct.

Page 28

1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 to compensate you for your work from the time --  
3       MR. SCARING: Objection.  
4       Q. -- you started at Barclays forward?  
5       MR. SCARING: I object to the  
6 question.  
7       Q. You can answer.  
8       A. Okay. I don't know how these bonuses  
9 were derived --  
10       Q. Okay.  
11       A. -- and what the consideration was for  
12 Lehman versus Barclays. I don't know.  
13       Q. Well, when did you first see this  
14 document from Barclays?  
15       A. Somewhere around this date. I can't  
16 remember exactly what date.  
17       Q. When you say "this date," you're  
18 pointing to September 24, 2008?  
19       A. 24, 2008.  
20       Q. Did you have any discussions with  
21 folks at Barclays during the week of September  
22 15 about your going to work for Barclays after  
23 the sale transaction?  
24       A. I can't recall.  
25       Q. Now, throughout this deposition we're

Page 27

1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       Q. Do you consider these amounts to be  
3 greater or lesser in general from what you were  
4 being paid at Lehman?  
5       A. That I don't -- I don't recall what my  
6 previous comp was exactly.  
7       Q. Okay. Let's skip down to the  
8 special -- you see it says Special Cash Award  
9 and it mentions an amount of about [REDACTED] ?  
10       A. Uh-huh.  
11       Q. Do you know what that was for?  
12       A. Again, I don't know what Barclays  
13 versus the Lehman and what contribution  
14 contributed to these outcomes. I mean, you  
15 know --  
16       Q. Okay.  
17       A. -- I wasn't --  
18       Q. This one you have not yet received; is  
19 that right?  
20       A. Yes, I have not received it.  
21       Q. And this is to be paid in installments  
22 on the first and second anniversaries of your  
23 start date at Barclays, right?  
24       A. Yes.  
25       Q. So do you believe that this award is

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 going to talk about the week of September 15,  
3 and just to reorient you, and I'm sure you're  
4 familiar with this, I'm talking about the week  
5 from September 15 when LBHI declared bankruptcy  
6 until the end of that week. I believe on that  
7 Friday LBI declared bankruptcy.  
8       A. Uh-huh.  
9       Q. And then when I talk about the closing  
10 of the sale transaction, I believe that took  
11 place on the following Monday.  
12       A. Uh-huh.  
13       Q. Okay? So what I'm interested in is in  
14 the week from September 15 to the closing of the  
15 sale transaction. Did you have any  
16 conversations with anyone about the possibility  
17 of you going to work for Barclays?  
18       A. There were conversations about going  
19 to work at Barclays, and I had those  
20 conversations with John Wickham, but I can't put  
21 a date on when those conversations were held.  
22       Q. Do you think they were during that  
23 week that we just talked about?  
24       A. I don't know. I don't recall.  
25       Q. Okay. What do you recall about those

Page 30

1       HIGHLY CONFIDENTIAL - J. COGLAN  
2       conversations?  
3       A.   At some point in time, you know, John  
4       indicated to me that, you know, I was going to  
5       go to Barclays as a Barclays employee, that  
6       there would be some sort of compensation  
7       associated with that.  
8       Q.   Okay.  
9       A.   And then, additionally, we had some  
10      conversations about the employees that work for  
11      me and would they be treated similarly.  
12      Q.   Did you have any expectations during  
13      that week about what your compensation would be  
14      when you went to work for Barclays?  
15      MR. STERN: Objection to the form. He  
16      said he didn't know when those conversations  
17      took place and now your question  
18      incorporates that week.  
19      Q.   Okay. You can answer the question.  
20      A.   Could you restate the question,  
21      please?  
22      Q.   Did you have any expectations during  
23      the week of September 15 about what you might be  
24      paid should you move to Barclays?  
25      A.   I -- I can't put the timing of it.

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2       closing of the sale transaction?  
3       A.   Yes. I can't -- I don't -- I don't  
4       remember the closing date, so whether it was  
5       before the closing or after closing, I can't  
6       say.  
7       Q.   Do you recall if it was after Monday,  
8       September 22?  
9       A.   I can't recall the date that I had  
10      this conversation.  
11      Q.   Okay. And what was -- what do you  
12      recall about the conversation?  
13      A.   We had a breakfast. Some of the  
14      people that work for me attended. Ivan was  
15      there, and he basically discussed that he was  
16      looking forward for us to come and join Barclays  
17      and, you know, we discussed some of the things  
18      that we needed to do in order to make that  
19      transition work effectively.  
20      Q.   Did he discuss compensation?  
21      A.   Not at breakfast, no.  
22      Q.   When did you first discuss  
23      compensation with Barclays?  
24      A.   Again, I can't put a date on when that  
25      first happened.

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2       Q.   Okay.  
3       A.   I would say that any conversations  
4       relative to compensation were held either late  
5       on the week, something like that. So in the  
6       beginning there were no expectation  
7       conversations or --  
8       Q.   Okay.  
9       A.   There was, you know, there was no  
10      communication whatsoever.  
11      Q.   Okay. When is the first time -- well,  
12      at some point you spoke with someone from  
13      Barclays about you going to work for Barclays,  
14      correct?  
15      A.   Yes. Yep.  
16      Q.   And who was that?  
17      A.   Ivan Ritossa, who was on the -- who  
18      was an employee at BarCap who was supervising  
19      the prime brokerage business at BarCap.  
20      Q.   Okay.  
21      A.   And I had a conversation with him.  
22      Q.   Do you recall when that was?  
23      A.   I don't have the exact date. I don't  
24      have the exact date.  
25      Q.   Do you recall if it was after the

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2       Q.   I guess I'm trying to find out, Mr.  
3       Coghlan, was there a negotiation with respect to  
4       your compensation between you and Barclays --  
5       A.   No.  
6       Q.   -- at some point?  
7       A.   No. No, there was no negotiation. I  
8       was told at some point this is the terms,  
9       similar to what's outlined in this letter, and,  
10      you know, I needed to sign the document and get  
11      it back, you know, with a certain date, which,  
12      again, I can't remember, you know, in order to  
13      finalize the paperwork.  
14      Q.   And who told you that?  
15      A.   John Wickham.  
16      Q.   And were you surprised at all by the  
17      terms that were in this letter?  
18      MR. STERN: Objection to the form.  
19      Q.   Let me rephrase that. I take it what  
20      you just mentioned is the letter that we marked  
21      as Exhibit 115?  
22      A.   I was not surprised or unsurprised  
23      by --  
24      Q.   Did you consider it a pay cut?  
25      A.   No, I did not.

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. Did you consider it an increase in</p> <p>3 your pay?</p> <p>4       A. No, I did not.</p> <p>5       Q. Okay. You're aware that there was an</p> <p>6 Asset Purchase Agreement signed between Barclays</p> <p>7 and Lehman, correct?</p> <p>8       MR. STERN: Objection to the form.</p> <p>9       A. I don't know the definition of asset</p> <p>10 agreement.</p> <p>11       Q. Okay. Well, we're going to look at it</p> <p>12 in a minute, but I guess my general question is</p> <p>13 if you could describe for me your role in the</p> <p>14 early negotiations, if any, between Barclays and</p> <p>15 Lehman. And I'm talking, when I say "early" --</p> <p>16 let's break it into two different periods.</p> <p>17       As I understand it, there was some</p> <p>18 negotiation between Barclays and Lehman prior to</p> <p>19 LBHI filing bankruptcy. Are you aware of that?</p> <p>20       A. Yes.</p> <p>21       Q. Were you involved in those</p> <p>22 negotiations at all?</p> <p>23       A. I was not.</p> <p>24       Q. Do you have any understanding of what</p> <p>25 took place in those negotiations?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       MR. STERN: Objection to the form.</p> <p>3       A. I do not recall.</p> <p>4       Q. Okay. Do you have any understanding</p> <p>5 or recollection about any terms that might have</p> <p>6 been discussed at that time? And again, I'm</p> <p>7 talking about prior to LBHI's filing bankruptcy.</p> <p>8       MR. STERN: Objection to the form.</p> <p>9       A. Can you repeat the question?</p> <p>10       Q. Again, I'm looking at the period prior</p> <p>11 to --</p> <p>12       A. Uh-huh.</p> <p>13       Q. -- September 15, prior to LBHI filing</p> <p>14 bankruptcy, I understood that Barclays and</p> <p>15 Lehman had some meetings about a possible</p> <p>16 transaction. So my question is, do you have any</p> <p>17 understanding or recollection about any terms</p> <p>18 that might have been discussed during that</p> <p>19 period?</p> <p>20       A. No, I do not.</p> <p>21       Q. And is it fair to say you did not</p> <p>22 participate in those discussions?</p> <p>23       A. That is correct.</p> <p>24       Q. Now let's talk about the period</p> <p>25 immediately after the filing of LBHI's</p>
Page 36	Page 37
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 bankruptcy going forward.</p> <p>3       A. Uh-huh.</p> <p>4       Q. You're aware, aren't you, that at some</p> <p>5 point in time Barclays and Lehman came to some</p> <p>6 agreement with respect to a transaction between</p> <p>7 the two entities, correct?</p> <p>8       A. Correct.</p> <p>9       Q. Okay. And were you involved in the</p> <p>10 initial negotiations of that agreement?</p> <p>11       A. I was not.</p> <p>12       Q. Were you called in to assist in any</p> <p>13 meetings relating to that negotiation?</p> <p>14       A. I was asked to provide certain</p> <p>15 information -- certain information.</p> <p>16       Q. What types of information?</p> <p>17       A. Michael Gelband, who ran Capital</p> <p>18 Markets, was asking me what -- what was the</p> <p>19 balance sheet of the financing business going to</p> <p>20 look like at, you know, at the end of the week.</p> <p>21       Q. At the end of the week of September</p> <p>22 15?</p> <p>23       A. Yes.</p> <p>24       Q. And what did you tell him?</p> <p>25       A. \$40 billion.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. And I just want to understand what you</p> <p>3 just told me now. The balance sheet of the</p> <p>4 financing business includes what?</p> <p>5       A. Both the fixed income matched book and</p> <p>6 the stock loan business. When you borrow in</p> <p>7 securities and move cash, it creates assets on</p> <p>8 the balance sheet.</p> <p>9       Q. Okay.</p> <p>10       A. So Michael wanted to know what the</p> <p>11 size of that balance sheet was going to be at</p> <p>12 the end of business that week.</p> <p>13       Q. Okay. And you took that to mean the</p> <p>14 Friday after September 15?</p> <p>15       A. Yes.</p> <p>16       Q. And how did you come up with the \$40</p> <p>17 billion number?</p> <p>18       A. I circled the traders. We were, you</p> <p>19 know, during the week, the firm and the matched</p> <p>20 book was downsizing very rapidly and, you know,</p> <p>21 we were, you know, customers wanted their</p> <p>22 collateral back.</p> <p>23       MR. STERN: Excuse me. I just I think</p> <p>24 the reporter -- I want to make sure the</p> <p>25 reporter has what you said right. Did you</p>

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say the firm and the matched book or the firm in the matched book.

A. No, the firm and the matched book were both -- both returning collateral and returning cash in the matched book as, you know, in rather rapid fashion, and the firm was trying to dispose of assets in a rapid fashion.

Q. When you say "the firm," are you referring to LBI or are you referring to a larger Lehman entity?

A. No, there's two businesses that I touch. One is the financing business and the other is I financed firm positions. So when the firm buys a security, I have to repledge that to raise cash to pay for that security.

Q. Okay.

A. So that activity, which does not report to me, was also downsizing as well.

Q. So the \$40 billion figure that you gave to Mr. Gelband reflected both of those businesses?

MR. STERN: Objection to the form.

A. No. The \$40 billion was relative to the financing business, where I was responsible

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for and managed the balance sheet for the financing business.

Q. Okay. And was the \$40 billion figure that you gave him a projection of a figure that was declining during that week?

A. Yes.

Q. And so you were estimating that by Friday it would be at \$40 billion?

A. Yes.

Q. What did you base that estimate on?

A. In looking at, you know, those securities and those transactions where we thought we could return the cash end of the collateral where there was liquidity in the secondary markets that we could unwind trades, and so I worked with the people that work for me and tried to, you know, project where we thought we would be at the end of the week.

Q. So was the decline in this value the result of market declines in the values of the securities, or were you -- and again, I'm going to probably misstate something, but -- or were you unwinding positions and just getting rid of securities?

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A. We basically were returning collateral back to clients and cash to clients. So the amount of transactions that sat in the business was declining as a result of primarily credit considerations by clients wanting to exit their relationship with LBI as quickly as possible.

Q. And do you know what the amount of that --

MR. STERN: Excuse me. The business, what are you referring to, the business? Financing business?

THE WITNESS: Yes, the financing business.

MR. HINE: Jack, you'll get a chance to do follow-up questions.

MR. STERN: I just want the record to be clear. Let's go off the record for a second.

(Discussion off the record.)

BY MR. HINE:

Q. We previously were discussing the estimate they gave Mr. Gelband about a \$40 billion figure by Friday. What was the level of this business on Monday?

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A. I don't recall.

Q. Could you give me an estimate or do you have any general understanding?

A. I don't recall where we were on Monday.

Q. Okay. And what did Mr. Gelband do with this figure?

A. I don't know.

Q. Did you have any further conversations with him about this estimate?

A. No.

Q. Did you have any discussions with anyone else involved in the negotiations of the transaction between Barclays and Lehman? And let's just talk about it say on Monday, the 15th.

A. To the best of my knowledge, I did not discuss -- have any conversations with people negotiating. That being said, I don't know who exactly were the negotiators and who was playing what role.

Q. Okay.

A. So, inadvertently, but not -- not in a capacity of discussing an identified person

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 negotiating the transaction, you know, giving</p> <p>3 them information one way or the other.</p> <p>4       Q. Okay. So I understand what you said,</p> <p>5 but, I mean, other than this one incident with</p> <p>6 Mr. Gelband, is it correct to say that's the</p> <p>7 only incident where you recall being called in</p> <p>8 to provide some information that is going to be</p> <p>9 used in some negotiation?</p> <p>10       MR. STERN: Objection to the form.</p> <p>11       A. Could you repeat the question?</p> <p>12       Q. Let's try that again. Were you aware</p> <p>13 on Monday, the 15th, that there was some</p> <p>14 discussions going on between Barclays and</p> <p>15 Lehman?</p> <p>16       A. I don't recall what I knew about the</p> <p>17 Barclays situation on Monday.</p> <p>18       Q. Okay. But at some point on Monday you</p> <p>19 were called by Mr. Gelband and asked this</p> <p>20 question that we previously discussed?</p> <p>21       A. I don't know if it was Monday. I</p> <p>22 don't recall if it was that Monday. It was</p> <p>23 during the week at some point he asked me that</p> <p>24 question.</p> <p>25       Q. Do you have any understanding -- let's</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 just step back a minute. Do you have any</p> <p>3 understanding of what the actual transaction was</p> <p>4 that was signed on Monday, the 15th, between</p> <p>5 Lehman and Barclays?</p> <p>6       A. No.</p> <p>7       Q. Did you ever review the Asset Purchase</p> <p>8 Agreement that was entered into between Lehman</p> <p>9 and Barclays on Monday?</p> <p>10       A. No, I did not.</p> <p>11       Q. Have you ever seen the Asset Purchase</p> <p>12 Agreement?</p> <p>13       A. No, I have not.</p> <p>14       Q. Do you have an understanding of what</p> <p>15 its terms were?</p> <p>16       A. No, I do not.</p> <p>17       Q. Well, let me just take a minute and</p> <p>18 let's mark -- let's just use Exhibit 1.</p> <p>19       MR. STERN: You want Mr. Coghlan to</p> <p>20 sit here and read this now?</p> <p>21       MR. HINE: No, I do not. I'm going to</p> <p>22 refer to specific pages.</p> <p>23       Q. Mr. Coghlan, I'm handing you a copy of</p> <p>24 what has been previously marked as Exhibit 1.</p> <p>25 That's a document entitled Asset Purchase</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 Agreement among several of these entities and</p> <p>3 Barclays Capital. And my question is have you</p> <p>4 ever seen this document before?</p> <p>5       A. To the best of my knowledge, I have</p> <p>6 not.</p> <p>7       Q. And is it fair to say you did not see</p> <p>8 it during that week of September 15th, I take</p> <p>9 it, right?</p> <p>10       A. Again, to the best of my knowledge, I</p> <p>11 have not seen this document.</p> <p>12       Q. Okay. And is it fair to say that,</p> <p>13 while you might have some ancillary role in</p> <p>14 providing information to people who were</p> <p>15 involved in this negotiation, you were really</p> <p>16 not involved in the negotiation of this</p> <p>17 agreement or any such agreement between Barclays</p> <p>18 and Lehman, is that right?</p> <p>19       A. I don't recall being part of any</p> <p>20 negotiation relative to this agreement.</p> <p>21       Q. Were you involved in any later</p> <p>22 negotiations between Barclays and Lehman?</p> <p>23       And let me be more specific with my</p> <p>24 question. Were you involved in negotiations</p> <p>25 surrounding what has been called a clarification</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 letter later in that week?</p> <p>3       A. Rephrase the question.</p> <p>4       Q. We see a document which has been</p> <p>5 called a clarification letter which was entered</p> <p>6 into over the following weekend at some point.</p> <p>7       Were you involved in any negotiations</p> <p>8 relating to the terms of that letter?</p> <p>9       A. To the best of my knowledge, no.</p> <p>10       Q. Okay. Were you involved in any</p> <p>11 negotiations relating to a First Amendment to</p> <p>12 this Asset Purchase Agreement later during that</p> <p>13 week?</p> <p>14       A. Again, to the best of my knowledge,</p> <p>15 no.</p> <p>16       Q. Okay. Is it fair to say that during</p> <p>17 the week of September 15 you were not directly</p> <p>18 interacting with anyone at Barclays?</p> <p>19       A. Say the question again.</p> <p>20       Q. I'm just trying to identify any</p> <p>21 contacts or interactions you might have had</p> <p>22 during the week of September 15 with folks at</p> <p>23 Barclays.</p> <p>24       Do you recall if you had any?</p> <p>25       A. Yeah, I had some contact with a</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 gentleman named Marty Malloy.</p> <p>3       Q. Okay.</p> <p>4       A. And Marty Malloy was a BarCap</p> <p>5 employee. He was the head of the Prime</p> <p>6 Brokerage over there.</p> <p>7       Q. Okay.</p> <p>8       A. And he was on the premises and we had</p> <p>9 a few conversations relative to the business,</p> <p>10 you know, what the business looked like. We had</p> <p>11 some conversations about, you know, the</p> <p>12 business.</p> <p>13       Q. Do you recall when this -- let me just</p> <p>14 back up a second. Was this one meeting with Mr.</p> <p>15 Malloy?</p> <p>16       A. No, there was more than one meeting.</p> <p>17       Q. Okay. Do you recall --</p> <p>18       A. Probably like two, maybe three.</p> <p>19       Q. Do you recall when these meetings</p> <p>20 were?</p> <p>21       A. They were in the earlier part of the</p> <p>22 week. I don't recall the exact day.</p> <p>23       Q. Can we drill down a little on the</p> <p>24 specifics of what you discussed? Was the</p> <p>25 discussion about specific securities that</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 comprise collateral with respect to any</p> <p>3 agreements or --</p> <p>4       A. The discussion was, you know, were we</p> <p>5 going to transfer any of the assets that were in</p> <p>6 the matched book over to BarCap and, to the</p> <p>7 extent that we did that, how would we do that.</p> <p>8       Q. All right. When you say "that," are</p> <p>9 you talking about the mechanics of doing that</p> <p>10 transition?</p> <p>11       A. I'm talking, yeah, about the</p> <p>12 mechanics, how do we move securities and the</p> <p>13 positions and the books and records, et cetera,</p> <p>14 over to BarCap.</p> <p>15       Q. Did you discuss with him the value of</p> <p>16 the collateral that was going to be moved and</p> <p>17 the securities?</p> <p>18       A. No, I did not.</p> <p>19       Q. Did you discuss with him the</p> <p>20 composition of the pool of securities that was</p> <p>21 going to be moved?</p> <p>22       A. No, I did not.</p> <p>23       Q. Okay. Did you discuss with him any</p> <p>24 asset classes that might or might not be moved</p> <p>25 to Barclays?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. No, because, you know, basically Marty</p> <p>3 was indicating that we were not going to</p> <p>4 transfer the assets over to BarCap, that they</p> <p>5 would not be transferred.</p> <p>6       Q. And so what was he asking about, then?</p> <p>7       A. When I was discussing with him was my</p> <p>8 impression was that perhaps some of the matched</p> <p>9 book positions in LBI would be transferred to</p> <p>10 BarCap and discussed if we were going to do that</p> <p>11 and, if so, how, he was indicating that he was</p> <p>12 under the belief that the assets that are in the</p> <p>13 financing business were not going to be</p> <p>14 transferred.</p> <p>15       Q. Did he say anything else about that?</p> <p>16       A. I don't recall.</p> <p>17       Q. Is he the only person at Barclays that</p> <p>18 you had direct interaction with during the week</p> <p>19 of September 15?</p> <p>20       A. I don't recall.</p> <p>21       Q. You've used the phrase "matched book"</p> <p>22 several times. Could you explain to me what</p> <p>23 that means?</p> <p>24       A. So there's two phrases. One is called</p> <p>25 matched book. That normally is a</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 characterization of fixed income financing book.</p> <p>3 The equity financing book is described normally</p> <p>4 as stock loan.</p> <p>5       Q. Okay.</p> <p>6       A. A matched book is basically a</p> <p>7 combination of reverse repos and repos</p> <p>8 collateralized by various fixed income</p> <p>9 instruments that we, you know, that we manage</p> <p>10 with the objective of making a financing spread</p> <p>11 between the borrowing and the lending of the</p> <p>12 money and the collateral.</p> <p>13       Q. And is it -- again, I'm getting close</p> <p>14 to my limit of knowledge here, but I think you</p> <p>15 just said your goal is to make the financing</p> <p>16 spread between repos and reverse repos; is that</p> <p>17 right?</p> <p>18       A. Yes.</p> <p>19       Q. Generally?</p> <p>20       A. In the fixed income matched book.</p> <p>21       Q. And in that matched book, when you say</p> <p>22 "matched," does that mean that you try to have</p> <p>23 the amount or value of the repos equal to the</p> <p>24 amount of the reverse repos?</p> <p>25       A. Not necessarily, because some of the</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   repos you would finance with firm cash.</p> <p>3     Q.   Okay.</p> <p>4     A.   Some of the repos may reside in other</p> <p>5   Lehman entities. So it would not necessarily --</p> <p>6   a better way to describe it is probably that the</p> <p>7   assets and the liabilities would be similar, but</p> <p>8   not necessarily the reverses and repos.</p> <p>9     Q.   Okay. I understand.</p> <p>10    Now, I've seen the phrase "long</p> <p>11   positions" and "short positions"?</p> <p>12    A.   Uh-huh.</p> <p>13    Q.   Is that a surrogate for what you just</p> <p>14   called assets and liabilities in this context?</p> <p>15    MR. STERN: Objection to the form.</p> <p>16    Q.   Let me rephrase it. What does the</p> <p>17   term "long position" mean in this context?</p> <p>18    A.   Well, there would be two types of</p> <p>19   longs that I would describe.</p> <p>20    Q.   Okay.</p> <p>21    A.   One would be in firm inventory. So a</p> <p>22   trader buys some sort of security, whether it's</p> <p>23   a convertible bond, investment grade bond,</p> <p>24   listed equity --</p> <p>25   Q.   Okay.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   A.   -- et cetera.</p> <p>3     When a trader buys those, he is long.</p> <p>4     Q.   Right.</p> <p>5     A.   Similarly, if a trader sells those, he</p> <p>6   is short.</p> <p>7     Q.   Okay.</p> <p>8     A.   In the financing or the matched book,</p> <p>9   the reverses would be an equivalent of a long,</p> <p>10   although a different risk characteristic, and</p> <p>11   the repos would be equivalent of a short.</p> <p>12    Q.   Okay.</p> <p>13    A.   One being on the asset side of the</p> <p>14   balance sheet, one being on the liability side</p> <p>15   of the balance sheet.</p> <p>16    Q.   So in your matched book is it correct</p> <p>17   to say that you try to balance the size of the</p> <p>18   long positions with the size of the short</p> <p>19   positions, as a general matter?</p> <p>20    MR. STERN: Objection to the form.</p> <p>21    A.   No, as I said earlier, the -- the</p> <p>22   assets and liabilities would be similar, not</p> <p>23   necessarily identical, because there's margins.</p> <p>24   But they would be similar, but it would not</p> <p>25   necessarily be reverses and repos, because we</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   would have, on occasion, securities financed</p> <p>3   with firm cash, securities financed in other</p> <p>4   legal entities, i.e., a bank, so it would not</p> <p>5   necessarily be all reverses and repos.</p> <p>6     Q.   Okay. Mr. Coghlan, could you turn to</p> <p>7   page 6 of this document, and again, I'm just</p> <p>8   going to ask a particular document.</p> <p>9     You can review the document, but you</p> <p>10   see in the middle of page 6, you see something</p> <p>11   called Purchased Assets?</p> <p>12    A.   Uh-huh.</p> <p>13    Q.   And then scrolling down, you will see</p> <p>14   item D?</p> <p>15    A.   Uh-huh.</p> <p>16    Q.   Which lists several different</p> <p>17   securities and it talks about those securities</p> <p>18   having a book value as of the date hereof of</p> <p>19   approximately 70 billion and they're defined as</p> <p>20   long positions, do you see that?</p> <p>21    A.   Uh-huh. Uh-huh.</p> <p>22    Q.   Early in the week of September 19, did</p> <p>23   you have any discussions with anyone about the</p> <p>24   size of your long positions?</p> <p>25    MR. STERN: Objection to the form.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   A.   The conversation I had that we -- I</p> <p>3   described to Mike Gelband what I thought the</p> <p>4   balance sheet was going to look like in the</p> <p>5   financing of that business.</p> <p>6     Q.   Okay.</p> <p>7     A.   The concept of this number, I don't</p> <p>8   know. The concept of long positions, I, as I</p> <p>9   described, I understand the jargon of long</p> <p>10   positions.</p> <p>11    Q.   Right.</p> <p>12    A.   How long positions fit into this</p> <p>13   document I don't know.</p> <p>14    Q.   Okay. When you say the financing</p> <p>15   business, the projection you gave to Mr.</p> <p>16   Gelband, is there another business that would be</p> <p>17   outside of your financing business that would</p> <p>18   have long positions?</p> <p>19    A.   Yes.</p> <p>20    Q.   And what business is that?</p> <p>21    A.   Many, many of the Lehman Brothers --</p> <p>22   as I said, the Equity Division could be long,</p> <p>23   the Fixed Income Division could be long. Again,</p> <p>24   it's important to differentiate inventory, where</p> <p>25   the firm is taking principal risk on that</p>



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2 security, and the financing business, where the  
3 firm is lending money on a collateralized basis.

4 Q. Okay. And when you say "inventory,"  
5 you're talking about securities that the firm  
6 buys and holds for whatever reason --

7 A. Yes.

8 Q. -- is that correct?

9 Okay. And is that typically larger or  
10 smaller than the pool of financing business that  
11 you were managing?

12 MR. STERN: Objection to the form.

13 A. I don't -- I can't recall.

14 Q. Okay. I realize I might be asking  
15 some naïve questions here, but I'm trying to  
16 understand where this \$70 billion came from, and  
17 before you answer it, if you might turn to page  
18 12, you'll see a reference to item little (i) to  
19 69 billion in short positions.

20 So my question to you is, I'm trying  
21 to understand what those two numbers entail.

22 MR. STERN: Objection to the form.

23 Q. If you know.

24 A. I can't -- I can't opine what those  
25 numbers entail. I have no involvement in this

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 document. I don't know --

3 Q. I understand.

4 A. This is the first time I've seen it,  
5 so I would be -- I don't know.

6 Q. Could you tell me what the size of  
7 your long and short positions were within the  
8 aspect of the firm that you managed on Monday,  
9 the 19th?

10 A. I don't recall.

11 MR. STERN: Objection to the form.  
12 Monday the 19th?

13 MR. HINE: I'm sorry, Monday the 15th.

14 A. I don't recall.

15 Q. On Monday, the 15th, were the long  
16 positions in the segment of the firm that you  
17 managed \$70 billion?

18 A. I don't recall.

19 Q. Does it sound like it could have been  
20 \$70 billion?

21 MR. STERN: Objection to the form.

22 A. I don't recall.

23 Q. Let me ask you this way: You have  
24 previously said you gave Mr. Gelband an estimate  
25 of a \$40 billion number --

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2 A. Uh-huh.

3 Q. -- as an estimate for the following  
4 Friday.

5 Was the decline in value of that pool  
6 of assets so great that it would have declined  
7 from 70 billion on Monday to 40 billion on  
8 Friday?

9 MR. STERN: Objection to the form.

10 A. I don't -- I just don't recall.

11 Q. Okay.

12 A. I just don't have that --

13 Q. Okay. When you use the term "matched  
14 book," is that used outside of just your  
15 department as well?

16 MR. STERN: Objection to the form.

17 A. The phrase "matched book" generally  
18 refers to fixed income financing trades which  
19 are, you know, which I supervise.

20 Q. Uh-huh. Well, let me just see if I  
21 can understand this. We had talked about the  
22 financing business which you supervise versus  
23 the firm inventory and the other businesses that  
24 the firm was engaged in.

25 Would those other businesses employ a

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 concept of a matched book, to your knowledge?

3 A. They may have done, independent of our  
4 group, repurchase or reverse repos, yes.

5 Q. Okay. So is it correct to say that,  
6 as an entire entity, Lehman would try to  
7 maintain a matched book, as a general matter?

8 MR. STERN: Objection to the form.

9 A. Can you repeat the question?

10 Q. I understand you said that within your  
11 finance business you tried to maintain a matched  
12 book as a general matter?

13 A. Uh-huh.

14 Q. Correct?

15 MR. STERN: Objection to the form.

16 A. Can you repeat the question again?

17 Q. Within your finance business, you  
18 mentioned the notion of a matched book, correct?

19 MR. STERN: Objection to the form.

20 A. In the finance business, I described  
21 that normally the assets and the liabilities,  
22 absent some variations, because of margin and  
23 some other cash flows, would be somewhat  
24 similar, and that's the way, you know, the  
25 composition of the matched book would be.

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 MR. STERN: Can we take a short break?  
3 MR. HINE: Sure.  
4 (Recess; Time Noted: 10:33 A.M.)  
5 (Time Noted: 10:38 A.M.)  
6 BY MR. HINE:  
7 Q. Mr. Coghlan, I have -- if you could  
8 look at page 6 of that document again. And  
9 again, I apologize, I know you didn't see this  
10 document, but if you look on the Purchased  
11 Assets, item D, the item we were talking about  
12 previously on long positions?  
13 A. Uh-huh.  
14 Q. If you look through that list of  
15 different types of securities, could you tell me  
16 which ones fall within the purview of your  
17 financing business?  
18 MR. STERN: Objection to the form.  
19 You can answer.  
20 A. There's two types of these types of  
21 securities that -- these securities could be in  
22 two ways. They could be in the firm inventory.  
23 Again, a government trader could have bought a  
24 government bond.  
25 Q. Okay.

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 just not --  
3 A. I don't know what the definitions,  
4 what -- I don't know what section D means when  
5 it describes those.  
6 Q. Okay. Let's try Exhibit 19. Mr.  
7 Coghlan, I'm handing you a copy of a document  
8 marked as Exhibit 19, which is a single-page  
9 document with a Bates range BCI-CG-00033789?  
10 MR. STERN: Hang on one second. Where  
11 do you see that Bates number?  
12 Q. Let me redescribe it then. Mine has a  
13 Bates number. The exhibit 19, what's been  
14 previously marked as Exhibit 19, is a balance  
15 sheet of some sort. My question to you is if  
16 you've ever seen this document before.  
17 A. I have.  
18 Q. You have, okay. And when did you see  
19 this?  
20 A. I saw this document two days ago when  
21 prepping for this meeting with counsel.  
22 Q. Okay. Other than that meeting, have  
23 you ever seen this document before?  
24 A. I have not.  
25 Q. You see the date in the upper

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2 A. And so those securities could be part  
3 of the government trading business or those  
4 could be securities that I borrowed to make a  
5 loan and then repo on the other side to raise  
6 cash.  
7 Q. Okay. So am I correct to say that  
8 each of these types of securities could reside  
9 both in your part of the business as well as the  
10 inventory part of the business you have  
11 discussed?  
12 MR. STERN: Objection to the form.  
13 You can answer if you understand the  
14 question.  
15 A. Well, why don't you repeat the  
16 question again. I'm sorry.  
17 Q. Let me try it this way. Are there any  
18 securities listed here, types of securities  
19 listed here, that would not be in your financing  
20 part of the business?  
21 A. Perhaps exchange-traded derivatives  
22 and perhaps collateralized short-term  
23 agreements, because I don't know what those  
24 definitions mean.  
25 Q. Okay. When you say "perhaps," you're

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 right-hand corner is 9/16/08, you see that?  
3 A. I do.  
4 Q. Again, I'm wrestling with the same  
5 issue. Are there entries on a balance sheet  
6 like this that would apply solely to your  
7 financing business as a general matter?  
8 MR. STERN: Objection to the form.  
9 A. Say the question again. I'm sorry.  
10 Q. We've discussed the distinction  
11 between the financing business at Lehman and  
12 other businesses at Lehman?  
13 A. Uh-huh.  
14 Q. And my question is, on balance sheets  
15 that were typically generated at Lehman, did  
16 your financing business typically fall within  
17 certain of these categories that are listed on a  
18 document like this?  
19 MR. STERN: Objection to the form.  
20 Q. Very awkward question, but --  
21 MR. STERN: I'm going to object to  
22 every question until you establish whether  
23 he knows anything about this document, so...  
24 A. Yeah, I -- when I saw this document  
25 for the first time, I don't know what this

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 document is. I haven't seen -- I just don't</p> <p>3 know what it means.</p> <p>4       Q. Okay. Have you ever seen a balance</p> <p>5 sheet in this form generated at Lehman?</p> <p>6       A. Not to the best of my memory.</p> <p>7       Q. Have you ever seen a balance sheet at</p> <p>8 all during your years at Lehman?</p> <p>9       A. I have seen balance sheets in the</p> <p>10 financial statements, yes.</p> <p>11       Q. Understand that you've never seen --</p> <p>12 you haven't seen this document prior to your</p> <p>13 meeting with counsel. Is there any way you can</p> <p>14 tell me just by looking at these lists of assets</p> <p>15 whether there's a way to divide this between the</p> <p>16 financing business that you run and the other</p> <p>17 entities at Lehman?</p> <p>18       A. I don't know how -- I don't know what</p> <p>19 the document means, so I don't -- I can't answer</p> <p>20 that question.</p> <p>21       Q. Okay. On September 15 or 16, did you</p> <p>22 have any understanding that the level of assets</p> <p>23 at Lehman was in the range of \$70 billion?</p> <p>24       A. No, I did not.</p> <p>25       Q. Did you have any understanding about</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 the overall level of assets at Lehman at that</p> <p>3 period of time?</p> <p>4       A. No, I did not.</p> <p>5       Q. And so is it fair to say that your</p> <p>6 understanding of the asset levels of Lehman at</p> <p>7 that time would relate solely to the financing</p> <p>8 business that you ran?</p> <p>9       A. Say the question again. I'm sorry.</p> <p>10       Q. At that time, September 15 or 16?</p> <p>11       A. Uh-huh.</p> <p>12       Q. Would you have had any knowledge or</p> <p>13 did you have any knowledge of the amounts of</p> <p>14 assets at Lehman in other businesses other than</p> <p>15 the one that you ran?</p> <p>16       A. I don't recall having knowledge of</p> <p>17 that.</p> <p>18       Q. Do you have any recollection of any</p> <p>19 discussions about \$70 billion worth of assets at</p> <p>20 that time?</p> <p>21       A. Say the question one more time. I'm</p> <p>22 sorry.</p> <p>23       Q. Do you have any recollections of any</p> <p>24 discussions during the week of September 15th</p> <p>25 about --</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. I don't.</p> <p>3       Q. -- a figure in the ballpark of around</p> <p>4 \$70 billion worth of assets?</p> <p>5       A. I don't recall having conversations</p> <p>6 about that.</p> <p>7       Q. Did you ever hear that mentioned</p> <p>8 anywhere during that week?</p> <p>9       A. I don't recall that.</p> <p>10       Q. Did you ever hear the figure \$69</p> <p>11 billion in liabilities mentioned during that</p> <p>12 week?</p> <p>13       A. I did not hear that. I don't recall</p> <p>14 hearing that.</p> <p>15       Q. Okay. While we're marking that, let</p> <p>16 me ask you another question, too, on that one</p> <p>17 document.</p> <p>18       MR. STERN: On 19?</p> <p>19       MR. HINE: Yes.</p> <p>20       Q. You see in the lower right-hand corner</p> <p>21 of that document, Mr. Coghlan, the two entries,</p> <p>22 one for cure payment and one for comp? Do you</p> <p>23 see that?</p> <p>24       A. Yes, I do.</p> <p>25       Q. Did you have any discussions during</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 that week, and that's the week of September 15,</p> <p>3 about issues relating to cure payments?</p> <p>4       A. No, I did not.</p> <p>5       Q. Is that something that would normally</p> <p>6 fall within your purview of your business?</p> <p>7       A. No, it does not.</p> <p>8       Q. Do you recall any discussions during</p> <p>9 that week about agreements between Barclays and</p> <p>10 Lehman as to compensation?</p> <p>11       A. I don't recall if the compensation</p> <p>12 discussions that I had with Barclays occurred</p> <p>13 during that week.</p> <p>14       Q. Okay. And let me draw a distinction</p> <p>15 between the compensation discussions we</p> <p>16 discussed earlier about your own personal</p> <p>17 compensation and just the compensation for a</p> <p>18 pool of Lehman employees that were eventually</p> <p>19 going to go to Barclays.</p> <p>20       So do you recall any discussions</p> <p>21 during that week about an aggregate type of</p> <p>22 agreement between Lehman and Barclays as to</p> <p>23 compensation?</p> <p>24       A. I don't recall that, no.</p> <p>25       Q. Do you recall any discussion or ever</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   hear any mention of a \$2 billion figure relating</p> <p>3   to compensation?</p> <p>4       A. I do not recall hearing that.</p> <p>5       Q. Did you hear or have any understanding</p> <p>6   that that figure had been bandied about?</p> <p>7       MR. STERN: Objection to the form.</p> <p>8       A. Not to the best of my knowledge, no.</p> <p>9       Q. Did you have any understanding during</p> <p>10   that week at all about a \$2 billion figure</p> <p>11   relating to compensation?</p> <p>12       A. No, I did not.</p> <p>13       Q. Mr. Coghlan, do you -- again, I'm</p> <p>14   asking you to put yourself back in the week of</p> <p>15   September 15.</p> <p>16       A. Uh-huh.</p> <p>17       Q. Did you have any understanding or did</p> <p>18   you ever hear any mention that there was going</p> <p>19   to be some sort of discount involved in the</p> <p>20   transaction between Barclays and Lehman?</p> <p>21       A. I did not hear that, no.</p> <p>22       Q. Did you ever hear any mention of the</p> <p>23   notion that Barclays was going to pay \$5 billion</p> <p>24   less than the value of Lehman's marks?</p> <p>25       A. I did not hear that, no.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. Did you ever hear any -- again, I'm</p> <p>3   not asking you if you heard that phrase in</p> <p>4   particular, but did you hear any general</p> <p>5   discussions about a discount with respect to the</p> <p>6   transaction between Barclays and Lehman?</p> <p>7       A. I did not.</p> <p>8       Q. Did you ever hear the phrase "block</p> <p>9   discount" used with respect to a transaction</p> <p>10   between Barclays and Lehman?</p> <p>11       A. I have not heard that.</p> <p>12       Q. Did you ever hear any discussions of</p> <p>13   the use of the phrase "haircut" with respect to</p> <p>14   the transaction between Barclays and Lehman?</p> <p>15       A. I did not hear that, no.</p> <p>16       Q. In your business, what is the term</p> <p>17   "haircut" typically used for?</p> <p>18       A. Normally in a lending relationship, a</p> <p>19   haircut is the amount of over-collateralization</p> <p>20   you would receive in order to give you a better</p> <p>21   credit protection. As an example, if I was</p> <p>22   doing a trade with mortgage securities and a</p> <p>23   financial institution wanted to borrow \$100</p> <p>24   million from me, I would probably take \$105</p> <p>25   million worth of collateral, mortgage</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   collateral, from that financial institution as</p> <p>3   over-collateralization.</p> <p>4       So that difference between \$100</p> <p>5   million lent and market value of securities of</p> <p>6   105 million, that 5 million is called the</p> <p>7   over-collateralization.</p> <p>8       Q. And using your hypothetical, the</p> <p>9   over-collateralization of 5 million is called</p> <p>10   the haircut, typically?</p> <p>11       A. Yes.</p> <p>12       Q. And in a repurchase transaction -- I'm</p> <p>13   sorry, was your hypothetical involving a</p> <p>14   repurchase transaction?</p> <p>15       A. Yes.</p> <p>16       Q. I just want to draw some distinctions</p> <p>17   about some terms. Using your hypothetical, the</p> <p>18   buyer would pay \$100 million and receive \$105</p> <p>19   million worth of collateral; is that right?</p> <p>20       A. I would lend money to a financial</p> <p>21   institution, for example.</p> <p>22       Q. Okay.</p> <p>23       A. I would lend him \$100 million.</p> <p>24       Q. Right.</p> <p>25       A. Financial Institution A.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. Right.</p> <p>3       A. They would have to give me collateral.</p> <p>4       Q. Okay.</p> <p>5       A. Because I don't do business unsecured.</p> <p>6   So I would require them to post a margin, and</p> <p>7   like in mortgage securities, that would be</p> <p>8   probably something like 5 percent, which would</p> <p>9   result in them giving me \$105 million worth of</p> <p>10   collateral against the \$100 million loan.</p> <p>11       Q. When you say "margin," is that the</p> <p>12   same as haircut?</p> <p>13       A. Yes.</p> <p>14       Q. Okay. And now, to unwind that</p> <p>15   transaction, is there something called a</p> <p>16   repurchase price that allows that institution to</p> <p>17   buy back its collateral?</p> <p>18       A. A repurchase price that would allow</p> <p>19   them to buy back?</p> <p>20       Q. Well, I'm trying -- how would you</p> <p>21   typically unwind that transaction --</p> <p>22       A. So --</p> <p>23       Q. -- when it ended?</p> <p>24       A. I would return the \$105 million worth</p> <p>25   of collateral, he would give me my \$100 million</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 back, and the trade would unwind.</p> <p>3       Q. And how does Lehman make money on</p> <p>4 that?</p> <p>5       A. Because I -- I would that I collateral</p> <p>6 from the financial institution and I would</p> <p>7 borrow money to pay for that collateral, and</p> <p>8 hopefully the money I lent to the financial</p> <p>9 institution is higher than what I borrowed from</p> <p>10 the lender to me.</p> <p>11       Q. I guess what I'm trying to find out</p> <p>12 is, what does the term "repo rate" mean?</p> <p>13       A. I don't know that legal definition.</p> <p>14       Q. Okay. No, I didn't think it was a</p> <p>15 legal definition. I have seen it in documents.</p> <p>16 I was wondering what your understanding of the</p> <p>17 term "repo rate" means.</p> <p>18       A. I don't understand that definition.</p> <p>19       Q. Okay. In some repurchase transactions</p> <p>20 isn't it the case that the party that lent the</p> <p>21 collateral initially has to buy it back at a</p> <p>22 higher price than it was provided in the loan?</p> <p>23       A. I don't understand the question.</p> <p>24       Q. Okay. Have you seen repo transactions</p> <p>25 where -- let's use your hypothetical.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. Uh-huh.</p> <p>3       Q. Institution A gives you \$105 million</p> <p>4 worth of collateral --</p> <p>5       A. Uh-huh.</p> <p>6       Q. -- and you pay them \$100 million.</p> <p>7       A. Uh-huh.</p> <p>8       Q. Again, I'm beyond my area of expertise</p> <p>9 here, but I understand that in some repo</p> <p>10 transactions if Institution A wants to unwind</p> <p>11 that transaction, he has the right to buy back</p> <p>12 that \$105 million --</p> <p>13       A. Uh-huh.</p> <p>14       Q. -- worth of collateral, but instead of</p> <p>15 paying 100, he might have to pay 101.</p> <p>16       Is that ever the case?</p> <p>17       MR. STERN: Objection to the form.</p> <p>18       A. I don't know that. I just don't</p> <p>19 understand the question.</p> <p>20       Q. Okay. Have you ever seen what's</p> <p>21 called a repurchase price in a repo transaction?</p> <p>22       A. I don't know the definition of a</p> <p>23 "repurchase price."</p> <p>24       Q. That's not a term you would see in the</p> <p>25 normal course of your business?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. No.</p> <p>3       (Exhibit 116, a document bearing Bates</p> <p>4 Nos. 10303063, marked for identification, as</p> <p>5 of this date.)</p> <p>6       Q. Mr. Coghlan, I'm handing you a</p> <p>7 document marked as Exhibit 116, which has the</p> <p>8 number at the bottom 10303063, and it appears to</p> <p>9 be an e-mail dated September 15, 4:22 A.M.,</p> <p>10 Greenwich Mean Time, between Mr. Feraca and</p> <p>11 yourself.</p> <p>12       Am I correct to say that 4 A.M.</p> <p>13 Greenwich Mean Time would be Sunday night here</p> <p>14 in the U.S.?</p> <p>15       A. I don't know.</p> <p>16       Q. Okay. My question about this e-mail,</p> <p>17 it says -- you'll read in the e-mail it says,</p> <p>18 "By his estimate, the amount of tri-party</p> <p>19 maturities for tomorrow plus all tri-party</p> <p>20 financings on open amounts to about 102 billion.</p> <p>21 This includes all current tri-party products in</p> <p>22 LBI only."</p> <p>23       Do you recall this e-mail, Mr.</p> <p>24 Coghlan?</p> <p>25       A. No, I don't.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. Can you tell by looking at it what</p> <p>3 he's talking about with that \$102 billion</p> <p>4 figure?</p> <p>5       A. "... to about 102 billion."</p> <p>6       Q. Yeah.</p> <p>7       A. That probably means that we have to</p> <p>8 have raised \$102 billion in tri-party to, you</p> <p>9 know, to do a financing of trades.</p> <p>10       Q. Okay. So this is he's talking about</p> <p>11 you're financing part of the business, right?</p> <p>12       A. Yes.</p> <p>13       Q. And he works for you, correct?</p> <p>14       A. John Feraca, yes.</p> <p>15       Q. Okay. You remember previously we</p> <p>16 talked about the \$40 billion estimate you gave</p> <p>17 to Mr. Gelband about Friday, the value of the</p> <p>18 business as of Friday?</p> <p>19       A. Uh-huh.</p> <p>20       Q. The upcoming Friday?</p> <p>21       A. Uh-huh.</p> <p>22       MR. STERN: Objection to the form.</p> <p>23       Q. I'm just trying to get you back to</p> <p>24 that testimony.</p> <p>25       Does this \$102 billion figure</p>

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 mentioned here on the previous Sunday or Monday  
3 relate in any way to the estimate that you gave  
4 Mr. Gelband about the \$40 billion?  
5 MR. STERN: Objection to the form.  
6 A. I don't recall this document.  
7 Q. Right.  
8 A. So I can't say how this document foots  
9 to the information, if at all, to the numbers I  
10 gave Mr. Gelband.  
11 Q. Okay. Does this refresh your  
12 recollection in any way about the level of the  
13 value of the business as of the Monday?  
14 A. No, it does not.  
15 MR. STERN: Objection to the form.  
16 Q. Okay.  
17 MR. STERN: When you say "the  
18 business," I assume you are referring, Mr.  
19 Hine, to the financing business?  
20 MR. HINE: I was.  
21 Q. Mr. Coghlan, I'd like to ask one  
22 follow-up question about the previous exhibit,  
23 the APA, the \$70 billion figure that we had  
24 looked at previously, and the balance sheet,  
25 which is Exhibit 19. So it will be Exhibits 1

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 exhibits.  
3 Mr. Coghlan, do you have any role in  
4 the preparation of LBH's or LBI's bankruptcy  
5 filing?  
6 A. No, I did not.  
7 Q. Were you ever consulted as to anything  
8 with respect to those filings?  
9 A. Not to the best of my knowledge.  
10 Q. I take it you never appeared in court  
11 with respect to the bankruptcy proceedings of  
12 either of those entities?  
13 A. That's true.  
14 Q. Okay. Could we just talk for a minute  
15 about repo agreements in general? As I  
16 understand it, there's something called a Master  
17 Repurchase Agreement?  
18 A. There is.  
19 Q. And what is the role of that  
20 agreement, if you know?  
21 A. It documents the terms of the repo  
22 agreement between an institution, such as  
23 Lehman, and counterparties that we do financing  
24 transfers.  
25 Q. So there would be a master agreement

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 and 19, if you just open them to page 6 of  
3 Exhibit 1 and page 19.  
4 A. Uh-huh.  
5 Q. And I understand your limited or lack  
6 of access to these two documents, but could you  
7 just -- is there any way you could tell me --  
8 Here's my problem: I see on Exhibit  
9 19 the figure \$73 billion in assets, do you see  
10 that?  
11 A. Yes, I do.  
12 Q. And I'm trying to reconcile that with  
13 the \$70 billion long position that's mentioned  
14 in the other document. Is there any way you  
15 could speculate or hazard a guess as to how  
16 those numbers could be different?  
17 MR. STERN: Objection to the form.  
18 Calls for speculation.  
19 Q. You can answer.  
20 A. No, I don't know.  
21 Q. Same question with respect to the  
22 liabilities. You wouldn't know either?  
23 MR. STERN: Same objection.  
24 A. No, I don't know.  
25 Q. Okay. That's all I have with those

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 between Lehman and Barclays, for example?  
3 A. There could be, yes.  
4 Q. I'm not trying to trick you. I'm  
5 going to introduce an exhibit here. I just want  
6 to not so much ask you questions about this  
7 exhibit, I just don't want to be seen to try to  
8 be misleading here. So I'm going to give you  
9 the agreement and ask you if you've seen it  
10 before.  
11 (Exhibit 117, Master Purchase  
12 Agreement, marked for identification, as of  
13 this date.)  
14 Q. Mr. Gelband, I'm handing you two  
15 documents. One is Exhibit 117, which is  
16 entitled Master Repurchase Agreement.  
17 MR. STERN: This is Mr. Coghlan.  
18 MR. HINE: Oh, I'm sorry. You  
19 apologize. I got Mr. Gelband on the brain.  
20 Q. Mr. Coghlan, I'm handing you Exhibit  
21 117, which is entitled Master Repurchase  
22 Agreement, and you'll see it's dated as of July  
23 23, 1998.  
24 Have you ever seen that document  
25 before?

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. No, I have not.</p> <p>3       Q. Is it fair to say that this document</p> <p>4 is not something you normally use in the course</p> <p>5 of your business?</p> <p>6       A. It's not something that I would</p> <p>7 personally review or, you know, and execute,</p> <p>8 yes.</p> <p>9       Q. And fair to say that you're not</p> <p>10 involved in negotiating the terms of this</p> <p>11 agreement?</p> <p>12       A. To the best of my knowledge, I did not</p> <p>13 negotiate terms of this agreement.</p> <p>14       Q. I also handed you a document which has</p> <p>15 been previously marked as 57B.</p> <p>16       A. Uh-huh.</p> <p>17       Q. Which is entitled Amendment Agreement,</p> <p>18 dated as of September 15. Do you see that?</p> <p>19       A. Yes, I do.</p> <p>20       Q. Have you ever seen this document</p> <p>21 before?</p> <p>22       A. Not to the best of my knowledge.</p> <p>23       Q. I take it, then, you were not involved</p> <p>24 in any kind of negotiations or discussions</p> <p>25 around this amendment, which is filed on Monday</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 or dated as of Monday, the 15th?</p> <p>3       A. Not to the best of my knowledge.</p> <p>4       Q. Do you have any understanding of why</p> <p>5 an amendment was entered into on that Monday</p> <p>6 with respect to the master agreement?</p> <p>7       A. I do not know why.</p> <p>8       Q. Did you ever hear an amendment to the</p> <p>9 Master Repurchase Agreement being discussed?</p> <p>10       A. Not to the best of my knowledge.</p> <p>11       Q. Ever hear any mention of any kind of</p> <p>12 amendments to the Repurchase Agreements?</p> <p>13       A. Not to the best of my knowledge.</p> <p>14       Q. Is this something that would be</p> <p>15 handled by another department?</p> <p>16       MR. STERN: Objection to the form.</p> <p>17       Q. Let me rephrase that. Is the</p> <p>18 documenting of the Master Repurchase Agreement</p> <p>19 and amendments generally something that's</p> <p>20 handled by another department within Lehman?</p> <p>21       A. The GMRA's and amendments to the GMRA's</p> <p>22 normally would be handled by contract -- a group</p> <p>23 called Contract Finance that do the</p> <p>24 documentation work. Whether they did that in</p> <p>25 this case I don't know.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. That's within the Legal Department?</p> <p>3       A. Yes.</p> <p>4       Q. My question wasn't who handles the</p> <p>5 documentation, but who would decide -- who</p> <p>6 generally enters -- decides when an amendment is</p> <p>7 needed?</p> <p>8       A. I don't know.</p> <p>9       Q. Okay. Does your department ever get</p> <p>10 involved in amending the MRA?</p> <p>11       A. There may be times when there's</p> <p>12 certain issues brought to my attention that they</p> <p>13 would want my opinion about if we were going to</p> <p>14 make, not necessarily an amendment, but any sort</p> <p>15 of adjustment in the MRA, GMRA.</p> <p>16       Q. Do you recall any discussions during</p> <p>17 the week of September 15 about making any</p> <p>18 adjustments to the MRA?</p> <p>19       A. I do not recall having any of those</p> <p>20 conversations.</p> <p>21       Q. Did you hear any mention during that</p> <p>22 week of any kind of adjustments that were going</p> <p>23 to be made to the MRA?</p> <p>24       A. I did not.</p> <p>25       Q. Do you have any understanding of why</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 an amendment was made to the MRA on September</p> <p>3 15?</p> <p>4       A. I have no understanding why an</p> <p>5 amendment was executed.</p> <p>6       Q. If I walk you through various</p> <p>7 provisions of this agreement, I would take it</p> <p>8 you would not know why they were -- why those</p> <p>9 provisions were changed?</p> <p>10       A. I haven't seen this document. I don't</p> <p>11 know the framework on which the document was</p> <p>12 negotiated.</p> <p>13       Q. Fair enough.</p> <p>14       A. So --</p> <p>15       Q. Let me ask you, if you turn to the</p> <p>16 page which is marked at the top Schedule VIII.A</p> <p>17 in Roman numeral VIII.A?</p> <p>18       MR. STERN: Where is this?</p> <p>19       MR. HINE: In the upper left-hand</p> <p>20 corner it says Schedule VIII.A.</p> <p>21       MR. SCARING: I'm sorry, what</p> <p>22 agreement are you referring to? What</p> <p>23 exhibit?</p> <p>24       MR. HINE: Same Exhibit, 57B. I'm</p> <p>25 sorry. The seventh page of 57B entitled</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       "Schedule VIII.A."</p> <p>3       Q.   You see in paragraph 2, Mr. Coghlan,</p> <p>4       there's an amendment to paragraph 7 of Annex</p> <p>5       VIII and it deals with the rights of the buyer</p> <p>6       in purchased securities, and I know you have</p> <p>7       never seen this document before.</p> <p>8       Do you recall any discussions during</p> <p>9       the week of September 15 about any reason to</p> <p>10      amend or change the rights of buyers in</p> <p>11      purchased securities?</p> <p>12      A.   I don't recall, no.</p> <p>13      Q.   You don't have any understanding of</p> <p>14      why that might have been done during that week?</p> <p>15      A.   No, I do not. No.</p> <p>16      Q.   Could you turn two more pages to</p> <p>17      something called "Schedule A dated as of</p> <p>18      September 15." Have you ever seen a schedule</p> <p>19      like this to an MRA?</p> <p>20      A.   Yes.</p> <p>21      Q.   And what are these schedules typically</p> <p>22      used for?</p> <p>23      A.   To talk about the haircuts that the</p> <p>24      parties proposed.</p> <p>25      Q.   So when I see the column that says</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       "Margin Percentage," is that a haircut? Is that</p> <p>3       the haircut?</p> <p>4       A.   Yes.</p> <p>5       Q.   And previously we talked about the</p> <p>6       word "margin" versus "haircut." They're used</p> <p>7       simultaneously in this context?</p> <p>8       A.   Yes.</p> <p>9       Q.   Now, with respect to this particular</p> <p>10      Schedule A, do you recall any discussions during</p> <p>11      the week of September 15 about amending Schedule</p> <p>12      A to the MRA?</p> <p>13      A.   I don't recall having any</p> <p>14      conversations.</p> <p>15      Q.   Was there any need during that week to</p> <p>16      amend this schedule with respect to any repos</p> <p>17      that you were working on during that time?</p> <p>18      A.   Could you say that -- repeat?</p> <p>19      Q.   Let me try again. Do you recall</p> <p>20      during that week any need or discussions or</p> <p>21      suggestion that Schedule A to the agreement</p> <p>22      between -- the Master Agreement between Lehman</p> <p>23      and Barclays would have to be amended in some</p> <p>24      way?</p> <p>25      A.   I don't recall having any of those</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       discussions.</p> <p>3       Q.   Any mention or understanding of the --</p> <p>4       discussions about a haircut between -- with</p> <p>5       respect to the Lehman/Barclays Repurchase</p> <p>6       Agreements?</p> <p>7       A.   Not that I can recall.</p> <p>8       Q.   Okay. Does this list here look like</p> <p>9       the haircuts that were being used during that</p> <p>10      week?</p> <p>11      MR. STERN: Objection to the form.</p> <p>12      A.   I can't recall.</p> <p>13      Q.   Do you recall if the haircuts were</p> <p>14      much larger that week than this, this type of</p> <p>15      level?</p> <p>16      MR. STERN: Objection to the form.</p> <p>17      Q.   Or no recollection at all?</p> <p>18      A.   No recollection.</p> <p>19      Q.   Am I correct to say that a Schedule A</p> <p>20      like this would also be used to list the types</p> <p>21      of collateral that could be eligible -- I'm</p> <p>22      sorry, the types of securities that could be</p> <p>23      considered eligible to be used as collateral in</p> <p>24      a repo agreement?</p> <p>25      A.   This is a tri-party agreement.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q.   Okay.</p> <p>3       A.   And there's a concept called Schedule</p> <p>4       A --</p> <p>5       Q.   Right.</p> <p>6       A.   -- which lists the collateral that the</p> <p>7       counterparty will take and the haircut</p> <p>8       associated with it.</p> <p>9       Q.   Okay. And that's typical of a</p> <p>10      tri-party agreement?</p> <p>11      A.   To the best of my knowledge, yes.</p> <p>12      Q.   Is it not typical of a regular repo?</p> <p>13      MR. STERN: Objection to the form.</p> <p>14      A.   I --</p> <p>15      Q.   I guess let me rephrase it. I'm</p> <p>16      trying to understand why you said this is a</p> <p>17      tri-party agreement.</p> <p>18      Is there something distinct with</p> <p>19      respect to Schedule A between tri-party repos</p> <p>20      and other types of repos?</p> <p>21      A.   As I said earlier, some repos are</p> <p>22      bilateral, so they would -- the haircuts would</p> <p>23      be negotiated at the point of transaction.</p> <p>24      Q.   Right.</p> <p>25      A.   Here, the transaction is settled</p>



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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 through a tri-party, where the tri-party agent  
3 is settling the trade and the parties agree to  
4 what the terms are, you know, at the initiation  
5 of the tri-party level and the tri-party agent  
6 would operate and settle trades based on this  
7 schedule.

8 Q. Okay. I see. Do you recall any  
9 discussions on the week of September 15 about  
10 redefining what could be considered eligible  
11 collateral for the Lehman/Barclays repo  
12 agreement?

13 A. I don't recall having any of those  
14 conversations.

15 Q. Who at Lehman would have been involved  
16 in this type of amendment to the MRA?

17 MR. STERN: Objection.

18 Q. If you know?

19 MR. STERN: Objection to the form.

20 A. As I said, there was a group of people  
21 called -- described as Contract Finance --

22 Q. Okay.

23 A. -- that would handle negotiations and  
24 documentation. I don't know if this document  
25 was part of that because I was not privy to

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 that.

3 Q. Is a Mr. Guglielmo part of that group?

4 A. He's an employee in that group, yes.

5 Q. Mr. Coghlan, I'm handing you a  
6 document that's previously been marked as  
7 Exhibit 56. On the front cover is an e-mail, in  
8 which I believe you're not involved, but I would  
9 direct your attention to the document that  
10 starts on page 3 which is entitled "Custodial  
11 Undertaking in Connection With Master Repurchase  
12 Agreement."

13 MR. STERN: Are you going to give him  
14 an opportunity to review this document?

15 Q. You can if you like, but my real  
16 question is have you ever seen this document  
17 before?

18 A. I have not.

19 Q. I think I can save you the time to  
20 review it if I can just ask you a couple of  
21 questions.

22 Were you involved in any discussions  
23 during the week of September 15 with respect to  
24 a custodial undertaking agreement involving  
25 Lehman and Barclays and JPMC?

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1 HIGHLY CONFIDENTIAL - J. COGHLAN

2 A. To the best of my knowledge, no.

3 Q. Would that be handled by the same  
4 group you just mentioned, the Contract Group?

5 A. I don't know.

6 MR. STERN: Objection to the form.

7 Q. Do you recall any discussions or  
8 rumors or any understanding you might have had  
9 during that week about the need to amend or  
10 change a custodial undertaking agreement  
11 involving JPMC during that week?

12 MR. STERN: Objection to the form.

13 A. Could you repeat that again? I'm  
14 sorry.

15 Q. Do you recall any understanding or  
16 rumors you might have heard about why a  
17 custodial undertaking agreement involving JPMC  
18 was going to be amended or -- during that week?

19 MR. STERN: Objection to the form.

20 A. I do not recall hearing anything about  
21 any documentation adjustments with Barclays.

22 Q. Okay. This involves JPMC as well, who  
23 is apparently the custodian?

24 A. I do not recall.

25 Q. Just as a general matter, JPMC was

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Lehman's custodial agent in repos; is that  
3 correct?

4 A. It was one of them.

5 Q. Okay. And was Bank of New York  
6 Barclays' custodial agent?

7 A. It was one of them.

8 Q. Can we just talk generally? Am I  
9 correct to say you really don't have any  
10 familiarity with this document?

11 A. I have never seen the document. I've  
12 never heard the phrase "custodial undertaking,"  
13 so I've never seen this document before.

14 Q. Okay. Fair enough.

15 I want to just talk generally about  
16 the different -- some of the different  
17 financings during this week. Were you involved  
18 in securing financing from the Fed for LBI  
19 during the week of September 15?

20 A. I was not directly involved.

21 Q. Okay. And would that have been  
22 handled by a department outside of your  
23 financing business?

24 A. It would have been the responsibility  
25 of Treasury to do that.

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q.   Okay.</p> <p>3       A.   There were probably people in my group</p> <p>4       that helped them, but the, you know, the</p> <p>5       settlement of the securities and the tri-party</p> <p>6       was managed by Treasury.</p> <p>7       Q.   Okay. This was a new financing for</p> <p>8       LBI during that week; is that right?</p> <p>9       A.   I believe it was, yes.</p> <p>10      Q.   And do you recall why LBI undertook</p> <p>11      this financing arrangement with the Fed?</p> <p>12      A.   I do not know why, no.</p> <p>13      Q.   Do you recall any discussions about a</p> <p>14      decision to try to keep LBI open during that</p> <p>15      week while LBHI declared bankruptcy?</p> <p>16      A.   Could you say the question again?</p> <p>17      Q.   Do you recall any discussions or</p> <p>18      understanding about an effort to keep LBI open</p> <p>19      or in business during that week while LBHI --</p> <p>20      A.   I was not part of any discussions</p> <p>21      about that.</p> <p>22      Q.   Okay. Do you have any understanding</p> <p>23      of why LBI did not file bankruptcy until the</p> <p>24      following Friday, when other entities filed on</p> <p>25      Monday?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A.   I do not know why.</p> <p>3       Q.   Do you know why LBI entered into this</p> <p>4       Fed financing arrangement?</p> <p>5       A.   No, I don't. I do not know why.</p> <p>6       Q.   Were you involved in the efforts</p> <p>7       during the middle of the week to substitute this</p> <p>8       Fed financing with a different financing vehicle</p> <p>9       involving Barclays?</p> <p>10      A.   I was not --</p> <p>11      MR. STERN: Objection to the form.</p> <p>12      A.   I was not directly involved.</p> <p>13      Q.   Do you have understanding what was</p> <p>14      supposed to take place in that regard?</p> <p>15      A.   I don't recall.</p> <p>16      Q.   Did you have any understanding during</p> <p>17      that week that Barclays was going to enter into</p> <p>18      a tri-party repo with Lehman and Bank of New</p> <p>19      York that was supposed to replace financing that</p> <p>20      had been provided during the early part of the</p> <p>21      week by the Fed?</p> <p>22      MR. STERN: Objection to the form.</p> <p>23      A.   I understood that there was going to</p> <p>24      be -- the collateral was going to be moved out</p> <p>25      of Chase into Bank of New York. So I understood</p>
Page 92	Page 93
<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       that that was going to happen.</p> <p>3       Q.   Do you know the value of the</p> <p>4       collateral that was posted to the Fed financing?</p> <p>5       A.   No, I don't.</p> <p>6       Q.   Would your team have been involved in</p> <p>7       determining that value?</p> <p>8       A.   I don't believe so.</p> <p>9       Q.   Who do you think would have been</p> <p>10      involved in that?</p> <p>11      A.   I don't know.</p> <p>12      Q.   Did you have any involvement in</p> <p>13      selecting the collateral that was posted in</p> <p>14      support of the Fed financing?</p> <p>15      A.   No.</p> <p>16      Q.   Do you know who was involved in that?</p> <p>17      A.   No, I do not.</p> <p>18      Q.   Would it have been anyone within your</p> <p>19      business group?</p> <p>20      A.   To the best of my knowledge, no.</p> <p>21      Q.   But you have to have some knowledge of</p> <p>22      what collateral is -- has been pledged to the</p> <p>23      Fed, correct, at that time?</p> <p>24      MR. STERN: Objection to the form.</p> <p>25      A.   No, I would not necessarily know that.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q.   Well, let me ask you a question: If a</p> <p>3       certain pool of collateral gets pledged to the</p> <p>4       Fed on Monday, the 15th?</p> <p>5       A.   Uh-huh.</p> <p>6       Q.   Is that collateral no longer something</p> <p>7       that you can use in your matched book financing</p> <p>8       arrangements?</p> <p>9       MR. STERN: Objection to the form.</p> <p>10      A.   You know, that collateral would have</p> <p>11      been already financed, so it would not be</p> <p>12      required for me to finance that if the Fed was</p> <p>13      financing that.</p> <p>14      Q.   Okay. I'm trying to get a distinction</p> <p>15      between the financing business that we talked</p> <p>16      about earlier versus the other businesses.</p> <p>17      A.   Uh-huh.</p> <p>18      Q.   Was the collateral that was posted to</p> <p>19      the Fed finance -- or, used to collateralize the</p> <p>20      Fed financing on September 15, did that come out</p> <p>21      of the pool of collateral that you would</p> <p>22      normally manage in your matched book?</p> <p>23      A.   I don't know.</p> <p>24      Q.   Who would know that?</p> <p>25      A.   Probably Treasury.</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q.   Okay.</p> <p>3       A.   Would know what collateral was pledged</p> <p>4       to the Fed.</p> <p>5       Q.   That's Mr. Tonucci's group?</p> <p>6       A.   I believe so, yes.</p> <p>7       Q.   So if it had come out of -- had the</p> <p>8       collateral that was pledged to the Fed come out</p> <p>9       of the assets that you would normally be</p> <p>10      managing, would that have had some impact on</p> <p>11      your ability to manage your balanced book?</p> <p>12      MR. STERN: Objection to the form.</p> <p>13      A.   If the firm had pledged collateral to</p> <p>14      the Fed, that would be collateral that I would</p> <p>15      not have to finance. We would already have</p> <p>16      raised cash against it.</p> <p>17      Q.   Okay.</p> <p>18      A.   So the amount of cash I would have to</p> <p>19      raise would go down because the Fed would be</p> <p>20      lending us money as opposed to other third</p> <p>21      parties.</p> <p>22      Q.   Okay. Now, were you involved in the</p> <p>23      transferring of the collateral that was posted</p> <p>24      to the Fed financing to this new repo -- let's</p> <p>25      just get some terms here first.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       If I talk about the Fed financing,</p> <p>3       you'll understand that I'm talking about the</p> <p>4       financing that was entered into earlier in the</p> <p>5       week --</p> <p>6       A.   Uh-huh.</p> <p>7       Q.   -- involving the Fed, correct?</p> <p>8       A.   Uh-huh.</p> <p>9       MR. STERN: Objection to the form.</p> <p>10      Q.   Then I would like to refer you to the</p> <p>11      shorthand to refer to the Barclays repo, which</p> <p>12      in my parlance is a repurchase -- a tri-party</p> <p>13      agreement between Barclays, Bank of New York,</p> <p>14      and Lehman.</p> <p>15      MR. STERN: What's your basis for that</p> <p>16      assertion?</p> <p>17      MR. HINE: Well, I'm not asserting</p> <p>18      anything. I just want to -- let's --</p> <p>19      MR. STERN: Well, wait. Look. Look.</p> <p>20      Look.</p> <p>21      MR. HINE: Let me ask the question</p> <p>22      again, Jack, okay?</p> <p>23      MR. STERN: Well, if you have a</p> <p>24      question about whether it's a tri-party,</p> <p>25      that's fine, but to make an assertion --</p>
Page 96	Page 97
<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       MR. HINE: I'm not making an</p> <p>3       assertion. I'm trying to clarify something.</p> <p>4       So let me fix -- I hear your objection. Let</p> <p>5       me just fix it.</p> <p>6       MR. STERN: I'm curious what caused</p> <p>7       you to say it was a tri-party between</p> <p>8       Barclays, Bank of New York and Lehman. I'm</p> <p>9       very interested in --</p> <p>10      MR. HINE: Jack, do you have an</p> <p>11      objection you want to put on the record?</p> <p>12      Otherwise, stop coaching the witness.</p> <p>13      MR. STERN: I'm not coaching the</p> <p>14      witness. I'm asking you, can you ask him a</p> <p>15      question?</p> <p>16      MR. HINE: I will.</p> <p>17      Q.   Mr. Coghlan, are you aware of any</p> <p>18      financings during that week between Barclays and</p> <p>19      Lehman? And I mean the week of September 15.</p> <p>20      A.   Barclays and Lehman? No, I'm not</p> <p>21      aware of one.</p> <p>22      Q.   Are you aware of any repo agreements</p> <p>23      between Barclays and Lehman during the week of</p> <p>24      September 15?</p> <p>25      A.   Not that I can recall.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q.   Okay. Are you aware of any efforts to</p> <p>3       take the collateral from the Fed financing and</p> <p>4       place it into another repo arrangement involving</p> <p>5       Barclays during the week of September 15?</p> <p>6       A.   I was aware that we were moving</p> <p>7       collateral from the Fed financing to Bank of New</p> <p>8       York, and I was aware of that.</p> <p>9       Q.   Okay. And did that involve a repo</p> <p>10      arrangement with Barclays?</p> <p>11      A.   I don't know. I don't recall.</p> <p>12      Q.   And why were you moving collateral</p> <p>13      from the Fed financing to Bank of New York?</p> <p>14      A.   I don't know why we did that. I don't</p> <p>15      recall.</p> <p>16      Q.   What was your role in that?</p> <p>17      A.   My role in that was limited in the</p> <p>18      sense that I was not involved in that operation,</p> <p>19      if you would, and -- other than one of my</p> <p>20      employees was working long hours to help in that</p> <p>21      transfer from -- from the Fed to the Bank of New</p> <p>22      York.</p> <p>23      Q.   And who was that?</p> <p>24      A.   John Feraca.</p> <p>25      Q.   Feraca?</p>

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. John Feraca.  
3       Q. Okay. And what was he doing in that  
4 context?  
5       A. Helping identify collateral and what  
6 collateral, you know, we were transferring and  
7 getting kind of books and records right and  
8 working with others in Treasury and Operations  
9 to get it right.  
10      Q. Was he involved in placing values on  
11 that collateral?  
12      A. Not to my knowledge, no.  
13      Q. Did Bank of New York place values on  
14 that collateral?  
15      A. I don't know that information.  
16      Q. So what was your understanding of why  
17 the collateral was being transferred to Bank of  
18 New York --  
19      MR. STERN: Objection to the form.  
20      Q. -- during that week?  
21      MR. STERN: Objection to the form.  
22      A. I was not part of the decision to do  
23 that. It was simply a decision that was made  
24 by -- I don't know who. Treasury and the normal  
25 settlement groups were doing their normal job of

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. I've never seen this document before.  
3       Q. Okay. Have you ever seen a chart that  
4 listed Fed haircuts in another form?  
5       MR. STERN: Objection to the form.  
6       A. Repeat the question, please.  
7       Q. You see the entry in there entitled  
8 "Fed Haircut"?  
9       A. Uh-huh.  
10      Q. Do you have any awareness of what the  
11 Fed's haircut was in connection with its  
12 financing provided the week of September 15?  
13      A. No, I do not know what the haircuts  
14 were.  
15      Q. Did you have any understanding of what  
16 the Fed typically would ask for a haircut in  
17 connection with financings like this?  
18      A. I do not know that.  
19      Q. If you look at the same chart, you see  
20 the title "Current Haircut" at one of the  
21 columns?  
22      A. Yes.  
23      Q. Do you have any understanding what  
24 that might be referring to?  
25      A. No, I do not. I've never seen this

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 settling a trade from one place to another. So  
3 that was consistent.  
4       One of the employees that worked for  
5 me that could be helpful in this worked, you  
6 know, extensive hours to help facilitate the  
7 transfer to BoNY, Bank of New York.  
8       Q. After it was transferred to Bank of  
9 New York, did you have any understanding what  
10 happened to it after that?  
11      A. No, I do not.  
12      Q. Do you have any understanding how that  
13 collateral might have been transferred to  
14 Barclays eventually?  
15      A. Not that I -- no, I do not.  
16      (Exhibit 118, a document bearing Bates  
17 Nos. 10297296 and 10300641, marked for  
18 identification, as of this date.)  
19      Q. Mr. Coghlan, I'm handing you a copy of  
20 an exhibit marked 118, which is an e-mail dated  
21 September 15, and you are not a party to the  
22 e-mail.  
23      My question involves the chart that's  
24 attached as the second page. I was wondering if  
25 you have ever seen a chart like this before.

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 document before, so I don't know what that  
3 means.  
4       Q. I understand that. Do you have any  
5 understanding of the haircuts that Chase was  
6 demanding in its -- or, getting in its  
7 transactions during this period?  
8       A. No, that would -- I didn't handle the  
9 tri-party, so that would be handle by Paolo  
10 Tonucci. So I would not be privy to that.  
11      Q. When you said the "tri-party," you're  
12 talking about the Fed financing?  
13      MR. STERN: Objection to the form.  
14      A. No, I'm talking about the tri-party  
15 relationship between Lehman Brothers and Chase,  
16 and I would not be privy to that.  
17      Q. Okay. Just so I understand what you  
18 just said, the tri-party to which you are not  
19 privy would be between Lehman Brothers, Chase  
20 and Barclays?  
21      MR. STERN: Objection to the form.  
22      A. No. No, that's not correct.  
23      Q. Okay. I'm not trying to  
24 mischaracterize what you said.  
25      A. I'm referring to this document. This

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 document is a tri-party haircut schedule.</p> <p>3       Q. Right.</p> <p>4       A. What I'm saying is, if those haircuts,</p> <p>5 if they applied to Lehman Brothers, would have</p> <p>6 been negotiated, if you would, and understood by</p> <p>7 Paolo Tonucci.</p> <p>8       Q. Okay. And this is outside of the</p> <p>9 financing business that you run?</p> <p>10      A. Yes.</p> <p>11      Q. I apologize. I have to show you a</p> <p>12 bunch of documents during our deposition, but...</p> <p>13      A. That's fine.</p> <p>14       (Exhibit 119, a document bearing Bates</p> <p>15 Nos. 10302495, marked for identification, as</p> <p>16 of this date.)</p> <p>17      Q. Mr. Coghlan, I'm handing you a</p> <p>18 document marked as Exhibit 119, which is --</p> <p>19 appears to be an e-mail dated September 17</p> <p>20 between Mr. Azerad and Mr. Tonucci.</p> <p>21       I direct your attention to the first</p> <p>22 line, which says, "We need to have a meeting</p> <p>23 with Coughlin," and then it goes on to describe,</p> <p>24 "Lista is starting to unwind some term repos for</p> <p>25 commercial reasons (e.g., State Street), which</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 is going to use liquidity (increased haircuts)."</p> <p>3       My first question is, do you recall</p> <p>4 this -- actually, I take it that since you're on</p> <p>5 this e-mail, you don't recall it?</p> <p>6       A. Correct.</p> <p>7       Q. My question is, do you recall having a</p> <p>8 meeting at or about Wednesday of that week</p> <p>9 between either Mr. Azerad or Mr. Tonucci about</p> <p>10 this topic?</p> <p>11      A. I don't recall.</p> <p>12      Q. Could you explain to me what this</p> <p>13 topic is?</p> <p>14       MR. STERN: Objection to the form.</p> <p>15      A. I don't know. I never saw this</p> <p>16 before. I don't know what it means.</p> <p>17      Q. Okay. Could I ask just a technical</p> <p>18 question. What does the phrase "State Street"</p> <p>19 mean?</p> <p>20      A. State Street is a securities lender</p> <p>21 that would have been a counterparty to LBI,</p> <p>22 where we would have borrowed securities with</p> <p>23 them and we would have maybe borrowed money with</p> <p>24 them.</p> <p>25      Q. Do you understand who Lista is?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2      A. Yes.</p> <p>3      Q. Who is that?</p> <p>4      A. He was the head of short-term sales at</p> <p>5 Lehman Brothers at the time.</p> <p>6      Q. What's his full name, do you know?</p> <p>7      A. William.</p> <p>8      Q. William Lista?</p> <p>9      A. William Lista.</p> <p>10     Q. It mentions him starting to unwind</p> <p>11 some term repos for commercial reasons. Do you</p> <p>12 understand what that could be referring to?</p> <p>13     A. No, I do not.</p> <p>14     Q. Previously you had, when we talked</p> <p>15 about the \$40 billion estimate you gave to Mr.</p> <p>16 Gelband --</p> <p>17     A. Uh-huh.</p> <p>18     Q. -- you had talked about, as -- and I'm</p> <p>19 not trying to mischaracterize your testimony --</p> <p>20 I thought you had talked about unwinding repos</p> <p>21 because counterparties wanted to move the assets</p> <p>22 elsewhere or for whatever reason?</p> <p>23     A. Uh-huh.</p> <p>24     Q. Could this be referring to that</p> <p>25 process?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2      A. I don't -- it might. I just don't</p> <p>3 know.</p> <p>4      Q. Okay. Does the phrase "which is going</p> <p>5 to use liquidity" have any meaning to you in</p> <p>6 this context?</p> <p>7      A. No, it does -- I just don't know what</p> <p>8 this document -- I just don't know what it</p> <p>9 means.</p> <p>10     Q. And you don't recall any discussions</p> <p>11 around that week between either yourself and Mr.</p> <p>12 Tonucci or Azerad about this issue?</p> <p>13     A. No, I don't recall.</p> <p>14     Q. Can we just take a minute and just</p> <p>15 take a step back about what you were doing</p> <p>16 during this week?</p> <p>17     A. Uh-huh.</p> <p>18     Q. I know we've talked about the APA that</p> <p>19 was entered on Monday, but I was just wanting to</p> <p>20 see if you could give me a general description</p> <p>21 of what you were doing during this week.</p> <p>22 Whether it relates to the Barclays/Lehman</p> <p>23 transaction or not --</p> <p>24     A. Uh-huh.</p> <p>25     Q. -- I just want to kind of get a</p>

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       picture of what your involvement was, if any.  
3       A.   Well, the primary occupation of the  
4       group, if you would, that reports to me in LBI,  
5       we were basically being -- we were basically  
6       unwinding trades. We were sending back  
7       collateral and cash. And so that was what the  
8       primary objective of the business was, was to  
9       try to downsize and return collateral and return  
10      cash.  
11      Q.   And why was that?  
12      A.   Because, primarily -- there was two  
13      primary reasons: Customers wanted their cash  
14      and collateral back. That was one reason. And  
15      second of all, given all what happened at the  
16      holding company, you know, it was obvious that  
17      we were going to have a difficult time financing  
18      ourselves. So we needed to get the positions  
19      smaller and minimize the financing risk.  
20      Q.   And did there come a point when you  
21      could no longer finance yourself?  
22      A.   I don't recall that happening.  
23      Q.   So now, all right, is that correct to  
24      say that that was the primary focus of you and  
25      your department during that period of time?

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       September 21 -- 20th and 21st -- to locate  
3       unencumbered assets that could be transferred to  
4       Barclays?  
5       A.   No.  
6       Q.   Were you involved in any efforts  
7       during that weekend with respect to a 15c3  
8       calculation?  
9       A.   No, I was not.  
10      Q.   Were you involved in any efforts  
11      during that weekend with respect to a  
12      transaction -- OCC-related transactions?  
13      A.   I don't know what OCC-related  
14      transactions are. So, to the best of my  
15      knowledge, no.  
16      Q.   Were you involved in anything during  
17      that weekend, or were you home having a nice  
18      weekend?  
19      A.   I don't believe I was involved in  
20      business relative to that weekend. Now, at some  
21      point, you know, we did start discussion of  
22      compensation, and I don't know if it was that --  
23      and the transition and things like that. I  
24      don't know if that was over the weekend or -- I  
25      was out of town over the weekend, and I don't

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A.   Yes.  
3       Q.   Did you have any -- I'm just trying to  
4       get a general sense of the role you might have  
5       played in any dealings between Lehman and  
6       Barclays during that period.  
7       A.   Uh-huh.  
8       Q.   Do you recall any involvement in that?  
9       A.   No, other than the conversations I  
10      have referenced with Marty Malloy, to the best  
11      of my recollection, I did not have any  
12      conversations with anybody at Barclays.  
13      Q.   Were you involved at all in any kind  
14      of -- again, we might have asked this already,  
15      I'm just trying to get a sense of what you're  
16      doing -- were you involved in any way in efforts  
17      to transfer collateral to Barclays either during  
18      that week or the following weekend?  
19      A.   I was not directly involved. Again,  
20      that's the role of Treasury, and John Feraca,  
21      who works for me, was engaged in trying to be  
22      helpful. But the responsibility for that and  
23      the decision-making and control was Treasury.  
24      Q.   Okay. Were you involved in any  
25      efforts during the weekend -- and I guess that's

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       know if that began over the weekend or Monday,  
3       Tuesday, when.  
4       Q.   So where were you on the weekend?  
5       A.   I was out of town.  
6       Q.   Where was that?  
7       A.   Philadelphia.  
8       Q.   And do you know when you left?  
9       A.   Friday afternoon.  
10      Q.   I assume it wasn't a business-related  
11      trip?  
12      A.   Right.  
13      Q.   Okay. And when did you get back to  
14      town?  
15      A.   Sunday afternoon.  
16      Q.   Sunday afternoon?  
17      A.   Uh-huh.  
18      Q.   Were you involved in the closing of  
19      the sale transaction between Barclays and Lehman  
20      in any way?  
21      A.   No, I was not.  
22      Q.   Okay. I'm just trying to limit my  
23      questions and see what -- were you contacted  
24      over the weekend when you were out of town by  
25      anyone involved in the transaction between

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 Barclays and Lehman?</p> <p>3       A. Not to the best of my knowledge, no.</p> <p>4       Q. Were you ever asked to provide any</p> <p>5 information to that -- to the group involved in</p> <p>6 that?</p> <p>7       A. Not to the best of my knowledge, no.</p> <p>8       (Exhibit 120, an e-mail string, the</p> <p>9 first one in time dated September 17, 2008,</p> <p>10 at 6:31 P.M., marked for identification, as</p> <p>11 of this date.)</p> <p>12       Q. Mr. Coghlan, I'm handing you a copy of</p> <p>13 an exhibit marked as 120, which appears to be an</p> <p>14 e-mail string dated September 17, in which you</p> <p>15 are CC'd on a bunch of e-mails. If you wouldn't</p> <p>16 mind just taking a second, take whatever time</p> <p>17 you need to review that document.</p> <p>18       (Document review.)</p> <p>19       A. Uh-huh.</p> <p>20       Q. Have you had a chance to look at the</p> <p>21 document?</p> <p>22       A. I have.</p> <p>23       Q. Before we get to the document, are you</p> <p>24 sometimes referred to as "Cogs"?</p> <p>25       A. Yes.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. That's a nickname that your colleagues</p> <p>3 use, that name?</p> <p>4       A. Yes.</p> <p>5       Q. If we could -- if you wouldn't mind,</p> <p>6 let's start from the bottom up.</p> <p>7       A. Okay.</p> <p>8       Q. Which is how --</p> <p>9       (Discussion off the record.</p> <p>10       (Recess; Time Noted: 11:36 A.M.)</p> <p>11       (Time Noted: 11:41 A.M.)</p> <p>12 BY MR. HINE:</p> <p>13       Q. Mr. Coghlan, before we get to this</p> <p>14 document, your counsel clarified something for</p> <p>15 me off the record. I just wanted to make sure</p> <p>16 it doesn't change some of the testimony you</p> <p>17 previously gave.</p> <p>18       I think we talked about the</p> <p>19 transfer -- an effort to transfer collateral</p> <p>20 from the Fed financing to Bank of New York; do</p> <p>21 you recall that testimony?</p> <p>22       A. Say that one more time. I'm sorry.</p> <p>23       Q. I think we previously talked about an</p> <p>24 effort during the week of September 15 to</p> <p>25 transfer collateral from the Fed financing to</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 the Bank of New York?</p> <p>3       A. Correct.</p> <p>4       Q. And I might have misstated the notion</p> <p>5 that it might have been a tri-party repo</p> <p>6 involved.</p> <p>7       A. Uh-huh.</p> <p>8       Q. Do you have any understanding of what</p> <p>9 type of vehicle was involved in that effort with</p> <p>10 respect to the Bank of New York?</p> <p>11       A. No, the only thing I, as I said, I was</p> <p>12 indirectly involved because one of my employees</p> <p>13 was involved --</p> <p>14       Q. Okay.</p> <p>15       A. -- was transferring collateral to the</p> <p>16 Bank of New York.</p> <p>17       Q. Okay.</p> <p>18       A. Under what documents, I don't --</p> <p>19       Q. So do you have any knowledge of</p> <p>20 whether that was a bilateral repo arrangement?</p> <p>21       A. I don't, no. I don't know if it was</p> <p>22 tri-party, repo, I don't know.</p> <p>23       Q. Is it correct to say that that,</p> <p>24 whatever the arrangement was, it was handled by</p> <p>25 the Treasury Department at Lehman?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. I don't know. Normally, they would</p> <p>3 handle the tri-party.</p> <p>4       Q. Okay.</p> <p>5       A. You know, but given the circumstances</p> <p>6 of discussions with Barclays, someone else may</p> <p>7 have done that.</p> <p>8       Q. Okay. If you could turn your</p> <p>9 attention to Exhibit 20.</p> <p>10       Have you had a chance to look through</p> <p>11 that?</p> <p>12       A. Yes, I have.</p> <p>13       MR. STERN: Exhibit 120.</p> <p>14       Q. I'm sorry, Exhibit 120. First of all,</p> <p>15 do you recall this e-mail exchange at all?</p> <p>16       A. No, I do not.</p> <p>17       Q. Do you recall any discussions along</p> <p>18 these lines that you might have had with either</p> <p>19 Mr. Lowitt or Tonucci during this period?</p> <p>20       A. No, I do not.</p> <p>21       Q. Do you recall any discussions you ever</p> <p>22 had with Mr. Lowitt during the week of September</p> <p>23 15?</p> <p>24       A. No, I do not recall.</p> <p>25       Q. Do you ever recall meeting with him?</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. I don't recall meeting with him.</p> <p>3       Q. Do you ever recall him talking to you</p> <p>4       on the phone about his dealings with the</p> <p>5       Lehman/Barclays transaction?</p> <p>6       A. No, I never talked to him about the</p> <p>7       Lehman/Barclays transaction.</p> <p>8       Q. How about Mr. Tonucci, do you recall</p> <p>9       meeting with him during that week?</p> <p>10      A. No, I don't recall meeting with him.</p> <p>11      Q. Do you recall speaking on the phone</p> <p>12      with him at all?</p> <p>13      A. No, I don't recall having, no,</p> <p>14      speaking with him on the phone.</p> <p>15      Q. Do you recall speaking with him in any</p> <p>16      way or communicating with him in any way during</p> <p>17      that week?</p> <p>18      A. No, I don't recall.</p> <p>19      Q. If we look at the title of this</p> <p>20      e-mail, it says, "If we had to novate the OMO</p> <p>21      transactions rather than have them collapsed,</p> <p>22      does that matter?"</p> <p>23      Does that refresh your recollection at</p> <p>24      all about any discussions you might have had on</p> <p>25      this topic?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. No. I -- no, it does not.</p> <p>3       Q. Do you understand OMO transactions to</p> <p>4       be the Fed financing?</p> <p>5       A. No, I do not.</p> <p>6       Q. Do you know what the term "OMO" refers</p> <p>7       to?</p> <p>8       A. No, I do not.</p> <p>9       Q. Do you understand what "collapsing"</p> <p>10      that transaction might have referred to?</p> <p>11      A. No, I do not.</p> <p>12      Q. If you read further up on the second</p> <p>13      page, it says, "It has left us short financing"</p> <p>14      (sic). "We may need to ask JP to cover."</p> <p>15      Do you have an understanding what that</p> <p>16      was referring to?</p> <p>17      A. No.</p> <p>18      Q. Could you speculate about what it</p> <p>19      might be referring to?</p> <p>20      MR. STERN: Objection to the form.</p> <p>21      Calls for speculation.</p> <p>22      Q. You can still do it.</p> <p>23      MR. STERN: Objection.</p> <p>24      A. It probably means that there's a cash</p> <p>25      deficit that JP Morgan would have to cover.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. And do you have any understanding why</p> <p>3       there might be a cash deficit?</p> <p>4       A. No, I will not.</p> <p>5       Q. Do you know why they're copying you on</p> <p>6       this e-mail exchange?</p> <p>7       A. No, I do not.</p> <p>8       Q. Further up on that page it says,</p> <p>9       "Current plan, as I understand it, is to have</p> <p>10      trades with OMO unwind and take the collateral</p> <p>11      to Barclays."</p> <p>12      Does that remind you in any way of any</p> <p>13      discussions on that topic?</p> <p>14      A. No. This is the first I've heard of</p> <p>15      OMO.</p> <p>16      Q. Can you -- okay. Can you speculate or</p> <p>17      suggest any explanation for what they're talking</p> <p>18      about when they're saying "take the collateral</p> <p>19      to Barclays"?</p> <p>20      A. I -- no, I couldn't. I just don't</p> <p>21      know.</p> <p>22      Q. If we turn to the first page of this</p> <p>23      exhibit, it says here, "I think" -- "This is</p> <p>24      different I think. It is a trade with State</p> <p>25      Street that they matured early."</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Do you have any understanding of what</p> <p>3       trades with State Street might have been</p> <p>4       maturing early during that week?</p> <p>5       A. I don't know the transaction. It</p> <p>6       probably references that State Street had a</p> <p>7       financing trade that they matured early, but I</p> <p>8       don't know it firsthand. I'm just referencing</p> <p>9       what the language says.</p> <p>10      Q. I understand. What is normally the</p> <p>11      consequence of when a financing matures early?</p> <p>12      What does that mean?</p> <p>13      A. There's usually some sort of mark to</p> <p>14      market event. Sometimes there's a penalty-type</p> <p>15      event.</p> <p>16      Q. Trades with State Street are typically</p> <p>17      repos?</p> <p>18      A. They would be borrows. Probably</p> <p>19      borrows with State Street. We were borrowing</p> <p>20      collateral from them.</p> <p>21      Q. So you would borrow securities from</p> <p>22      State Street and pay a fee?</p> <p>23      A. Yes.</p> <p>24      Q. And "maturing early" suggests that the</p> <p>25      securities now have to go back to State Street?</p>



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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A. Yes, so they probably had a term lend</p> <p>3       to LBI that they wanted back immediately after</p> <p>4       the holding company bankruptcy. They wanted it</p> <p>5       back.</p> <p>6       Q. And then when you give them back their</p> <p>7       securities, they would give you back --</p> <p>8       A. Cash.</p> <p>9       Q. -- the cash? Okay.</p> <p>10       If you'll read further up, it talks</p> <p>11       about, "Plan is to early terminate the OMO and</p> <p>12       TSLF transaction."</p> <p>13       A. Uh-huh.</p> <p>14       Q. Do you know what "TSLF" is?</p> <p>15       A. It is one of the Fed liquidity</p> <p>16       programs.</p> <p>17       Q. Okay.</p> <p>18       A. Which one I can't recall off the top</p> <p>19       of my head, but it was a program established by</p> <p>20       the Fed to provide financing.</p> <p>21       Q. Okay. And do you recall any</p> <p>22       discussions of early terminating that financing?</p> <p>23       A. No.</p> <p>24       Q. Or that transaction?</p> <p>25       A. No, I don't recall.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q. Is that TSLF transaction something</p> <p>3       that was not handled by your department?</p> <p>4       A. The TSLF transaction, we would have</p> <p>5       given the collateral to the TSLF and we would</p> <p>6       have used the TSLF and given them the</p> <p>7       collateral. We would have executed the trade.</p> <p>8       So I forget what the mechanism is, but</p> <p>9       whatever where you get the collateral into the</p> <p>10       TSLF and some of these were different types of</p> <p>11       auction process, we would have gone into the</p> <p>12       TSLF, we would have put the bid in, and if we</p> <p>13       were successful in raising the cash, we would</p> <p>14       have given the TSLF, we would have pledged the</p> <p>15       money to TSLF.</p> <p>16       Q. When you say "we," you're talking</p> <p>17       about your Financing Department?</p> <p>18       A. The decision to use TSLF was made by</p> <p>19       Treasury, so we would tell them we want to go</p> <p>20       and use that. They would agree. We would</p> <p>21       execute the trade off the desk that works for</p> <p>22       me. The settlement of the trade would be</p> <p>23       through the normal settlement procedures.</p> <p>24       Q. Okay. So do you select the collateral</p> <p>25       that would be used in this trade?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A. Well, the TSLF only takes certain</p> <p>3       collateral.</p> <p>4       Q. Okay.</p> <p>5       A. So we would be limited in the types of</p> <p>6       collateral they would take. Relative to those</p> <p>7       guidelines, we would give the collateral into</p> <p>8       them. We would determine what collateral goes</p> <p>9       in.</p> <p>10       Q. And where do you find those</p> <p>11       guidelines?</p> <p>12       A. They were published by the Fed.</p> <p>13       Q. And so, within those guidelines, your</p> <p>14       department selected the securities that were</p> <p>15       going to go into that trade?</p> <p>16       A. No, we would put the types of</p> <p>17       securities. So if they were mortgage-backed</p> <p>18       securities, we would say, okay, we want to</p> <p>19       borrow a billion dollars. The actual settlement</p> <p>20       would be taken through the normal settlement</p> <p>21       processes.</p> <p>22       Q. When you say "the actual settlement,"</p> <p>23       you mean the actual selecting of particular</p> <p>24       securities?</p> <p>25       A. Right, that bond is going to go, that</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       bond is going to go, and that bond is going to</p> <p>3       go, and that bond is not going to go. That was</p> <p>4       done by the settlement people.</p> <p>5       Q. And just to remind me, who were the</p> <p>6       settlement people again? Was that Mr. Hraska?</p> <p>7       A. No, that would be both Paolo's group</p> <p>8       and Alastair Blackwell's group.</p> <p>9       Q. Okay. If you read further up -- well,</p> <p>10       okay, and then further in that sentence it says,</p> <p>11       "And then all the collateral to Barclays, so no</p> <p>12       ongoing Fed financing of Lehman."</p> <p>13       Do you recall any discussion of ending</p> <p>14       the Fed financing of Lehman during that week?</p> <p>15       A. I don't recall any of the -- any</p> <p>16       conversation relative to the Fed financing other</p> <p>17       than that the Fed -- I was told that the Fed</p> <p>18       wanted Barclays to step in as opposed to the Fed</p> <p>19       stepping in.</p> <p>20       Q. And what were you told about that?</p> <p>21       A. When was I told about that?</p> <p>22       Q. What were you told about that?</p> <p>23       A. When John Feraca got involved in the</p> <p>24       settlement process, he said that the motivation</p> <p>25       is to get Barclays to face the Fed as opposed to</p>

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2     have Lehman Brothers face the Fed, and so I did  
3     know that there was a motivation to restructure  
4     the relationship so the Fed was facing Barclays  
5     as opposed to facing Lehman.  
6     Q.   Were you told anything about how that  
7     was going to take place?  
8     A.   No. No, I was not told.  
9     Q.   Do you have any understanding of how  
10    that was going to take place?  
11    A.   No, I didn't have any input,  
12    communication around that.  
13    Q.   Did you ever hear anything about how  
14    that was going to take place?  
15    MR. STERN: Objection to the form.  
16    A.   What I knew about it was that we were  
17    working hard to transfer collateral over to Bank  
18    of New York and we were trying to facilitate  
19    that.  
20    Q.   That's all you knew about the whole  
21    effort to have Barclays --  
22    A.   To the best of my knowledge, yes.  
23    Q.   If you read a little further up, it  
24    talks about -- it mentions two different things.  
25    One is the Chase acceleration.

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2     because this is a continuation, it appears to  
3     me.  
4     (Exhibit 121, an e-mail string, the  
5     first one in time dated September 17, 2008,  
6     at 6:25 P.M., marked for identification, as  
7     of this date.)  
8     Q.   Mr. Coghlan, I'm handing you an  
9     exhibit marked 121, which appears to be a  
10    continuation of the same e-mail stream we've  
11    been discussing, only it looks like in the most  
12    recent two e-mails you're no longer a CC. Do  
13    you see where I'm referring to?  
14    Oh, I correct that. You are still a  
15    CC on the second-to-last one.  
16    A.   Which two --  
17    Q.   Let me rephrase that.  
18    MR. STERN: You mean the  
19    third-to-last?  
20    Q.   You'll notice, if you compare it to  
21    the prior e-mail, the prior e-mail stream ends  
22    with, "Got it. I am dealing with the State  
23    Street issue." Do you see that?  
24    A.   Yes.  
25    Q.   And then there are two more e-mails

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2     Do you understand what that phrase  
3     means?  
4     A.   No, I do not.  
5     Q.   You ever heard that phrase during that  
6     week?  
7     A.   No, I did not.  
8     Q.   Did you have anything -- did you  
9     speculate about what it might be referring to?  
10    MR. STERN: Objection to the form.  
11    A.   "Chase accelerate" -- no, I don't know  
12    what that means.  
13    Q.   If you read further on in that  
14    sentence, it says, "Perhaps that is State  
15    Street. PCDF will get bigger as a result."  
16    Do you have any understanding what  
17    that could be referring to?  
18    A.   I don't understand what the reference  
19    to State Street is. The PCDF was another Fed  
20    program, so if these two things happened, which  
21    I don't understand what these two things are,  
22    it's too vague, the result would be that we  
23    would be borrowing more from the Fed.  
24    Q.   Oh, I see. Okay. I gotcha.  
25    You might as well keep that e-mail,

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2     above that, do you see that?  
3     A.   Uh-huh.  
4     Q.   The first one says, "OK'd to increase  
5     PCDF. Ian." Do you have any understanding what  
6     he's referring to there?  
7     A.   I don't see that.  
8     (Mr. Stern indicating.)  
9     Q.   Do you see it now?  
10    A.   Yes, I'm sorry. Rephrase the  
11    question. Restate the question again. I'm  
12    sorry.  
13    Q.   Do you see the message that says,  
14    "OK'd to increase PCDF. Ian." Do you see that?  
15    A.   Yes.  
16    Q.   Do you have any understanding what  
17    that's referring to?  
18    A.   Well, the PCDF, as I said, was a Fed  
19    program.  
20    Q.   Right.  
21    A.   And somebody okayed an increase in  
22    borrowing through the PCDF program.  
23    Q.   Was that in fact done?  
24    A.   I don't know.  
25    Q.   Did you have a role in monitoring the

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 level of borrowing from the PCDF program?  
3       A. No, that was controlled by Treasury.  
4       Q. Further up on the e-mail it says --  
5 this is now an e-mail in which you are not a  
6 party, or you're not copied, apparently, but it  
7 says, "Hoping to do more with Barclays to avoid  
8 haircut impact."  
9       Do you have any idea what that could  
10 be referring to?  
11       MR. STERN: Objection to the form.  
12       A. No, I do -- I don't know what that  
13 means.  
14       Q. Could that be referring to the haircut  
15 impact of borrowing more from the PCDF?  
16       A. That could be an outcome.  
17       Q. Okay. I'm going to hand you one more  
18 exhibit which involves the same e-mail stream,  
19 so you might as well keep those in front of you.  
20       (Exhibit 122, an e-mail string, the  
21 first one in time dated September 17, 2008  
22 at 6:39 P.M., marked for identification, as  
23 of this date.)  
24       Q. Mr. Coghlan, I'm handing you an  
25 Exhibit marked I22, which appears to be a

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 2.8 billion for any reason during that week?  
3       A. No, I don't recall that.  
4       Q. If you go further up on the page, it  
5 says, "Spoke to Barclays. They can raise the  
6 money and will do the trade with us for 2.8  
7 billion."  
8       Does that refresh your recollection at  
9 all about the 2.8 billion?  
10       A. No, it does not.  
11       Q. Do you recall doing any kind of trade  
12 with Barclays for 2.8 billion during that week?  
13       A. No, I don't recall.  
14       Q. Okay. Would that be done in your  
15 group or --  
16       MR. STERN: Objection to the form.  
17       A. The discussions with Barclays and the  
18 settlement and the transfer out of the Fed into  
19 BoNY was handled outside my group.  
20       Q. Okay.  
21       A. The only role my group would play  
22 would be coordinating with Treasury on the  
23 settlement of whatever was negotiated.  
24       Q. Okay.  
25       (Exhibit 123, a document bearing Bates

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 further continuation of the same e-mail stream.  
3       The most recent messages appear to not include  
4 you as a CC, but I refer to you to midway down  
5 on the first page. It says, "Hope to do more  
6 with Barclays to avoid haircut impact."  
7       Do you see that?  
8       A. Yes.  
9       Q. If we continue up the page, you'll see  
10 a reference eventually to a statement that says,  
11 "Barclays thinks they can get cash ... need  
12 approval from Gerard. Can you ask him? \$2.8  
13 billion versus equities."  
14       Do you have any understanding what  
15 that could be referring to?  
16       MR. STERN: Objection to the form.  
17       A. Well, I mean, a couple of things.  
18 Take it that -- one piece is obvious Barclays  
19 thinks they can raise some cash. They need to  
20 get approval from Gerard LaRocco, who is a  
21 senior official at BarCap.  
22       Q. Okay.  
23       A. And I don't know what the "2.8 billion  
24 versus equities" means.  
25       Q. Any recollection of Barclays raising

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Nos. 68985, marked for identification, as of  
3 this date.)  
4       Q. Mr. Coghlan, I'm handing you an  
5 exhibit marked 123, which is an e-mail string  
6 from Thursday, September 18, and if you -- you  
7 do not appear to have been CC'd on this e-mail,  
8 but if you look in the second message down, it  
9 says, "Do you want me to talk to Coghlan about  
10 not doing any more repo unwinds?"  
11       I would like to give you a chance just  
12 to review the document first, but I want to  
13 point you to that sentence just to see if it  
14 triggers any recollections.  
15       MR. STERN: Please read the document.  
16       A. Okay.  
17       Q. Do you have any recollection of  
18 speaking with either Mr. Tonucci or Mr. Azerad  
19 during that week about this issue?  
20       MR. STERN: Objection to the form.  
21       A. There's a lot of issues covered in  
22 this, so it's hard to --  
23       Q. Okay. Well, my question is it says,  
24 "Do you want me to talk to Mr. Coghlan," meaning  
25 yourself, I take it, about some of the issues in

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   the e-mails below. So my question is, did you</p> <p>3   have any discussions with these individuals, Mr.</p> <p>4   Tonucci or Mr. Azerad, about any of the issues</p> <p>5   raised in the e-mail below?</p> <p>6       MR. STERN: Objection to the form.</p> <p>7       A. I did not talk to Mr. Tonucci. I</p> <p>8   don't recall talking to Mr. Tonucci or Mr.</p> <p>9   Azerad about any of the specific haircut changes</p> <p>10   and cash impact changes outlined in the e-mail.</p> <p>11   I don't recall having those conversations.</p> <p>12       Q. Did you recall speaking to them in</p> <p>13   general about haircut changes or --</p> <p>14       A. I did talk to Paolo briefly about, as</p> <p>15   we unwound repo trades, the impact that the cash</p> <p>16   movements would have, and I had spoken to him</p> <p>17   about, you know, how many unwinds are we</p> <p>18   supposed to do.</p> <p>19       Q. Can you explain to me what you meant</p> <p>20   by what you just said?</p> <p>21       A. Sure. In places where we had positive</p> <p>22   margin, okay, where people were posting</p> <p>23   collateral and cash to us, that created a cash</p> <p>24   surplus. As we started to unwind trades, that</p> <p>25   sometimes affected the cash surplus. So we had</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   to be thoughtful about what trades we could</p> <p>3   unwind because we couldn't -- we didn't want to</p> <p>4   go into negative cash flows.</p> <p>5       Q. Okay. You spoke to Mr. Tonucci about</p> <p>6   that topic sometime during that week?</p> <p>7       A. Yes.</p> <p>8       Q. And what did he say about it?</p> <p>9       A. He said that we should, you know, get</p> <p>10   as much -- we should get many of the financing</p> <p>11   trades eliminated but try not to do ones that we</p> <p>12   are positively cash flow. So try to do the ones</p> <p>13   where it would be cash neutral or cash additive.</p> <p>14       Q. When you say "cash additive," what</p> <p>15   does that mean?</p> <p>16       A. If I do a repo on a mortgage product</p> <p>17   for \$100 million and I have \$105 million worth</p> <p>18   of collateral, I can take that extra 5 percent,</p> <p>19   that 5 million, and I can pledge it and raise</p> <p>20   cash. When that trade goes back to the client,</p> <p>21   he takes his 105 million, I get my 100 million</p> <p>22   of cash, but that 5 million of surplus I have</p> <p>23   created by pledging his 5 percent is no longer</p> <p>24   there.</p> <p>25       Q. So would that be cash additive?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. No, cash negative.</p> <p>3       Q. So those are the ones you would want</p> <p>4   to unwind?</p> <p>5       A. No, we wouldn't want to unwind.</p> <p>6       Q. Okay. I understand.</p> <p>7       So you proceeded to unwind various</p> <p>8   transactions based on those instructions from</p> <p>9   Mr. Tonucci?</p> <p>10       A. Yeah, those were broad guidelines, I</p> <p>11   would say.</p> <p>12       Q. And was that your mandate during that</p> <p>13   week with respect to unwinding transactions?</p> <p>14       A. That was kind of the guideline that</p> <p>15   Paolo told me to follow, you know, where</p> <p>16   possible.</p> <p>17       Q. Did that change at all during toward</p> <p>18   the end of the week?</p> <p>19       A. Not to the -- not to the best of my</p> <p>20   knowledge.</p> <p>21       Q. Okay.</p> <p>22       (Exhibit 124, a document bearing Bates</p> <p>23   Nos. 10303258, marked for identification, as</p> <p>24   of this date.)</p> <p>25       Q. Mr. Coghlan, I'm handing you a</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   document marked as Exhibit 124, which is an</p> <p>3   e-mail stream dated September 18, in which you</p> <p>4   are a recipient from Mr. Feraca.</p> <p>5       Do you recall seeing this e-mail at</p> <p>6   all?</p> <p>7       A. No, I do not.</p> <p>8       Q. Have you had a chance to take a look</p> <p>9   at it briefly.</p> <p>10       (Document review.)</p> <p>11       A. I've looked at it now, yes.</p> <p>12       Q. In the first phrase toward the top, it</p> <p>13   says, "This is a process that was agreed to by</p> <p>14   Ops, BCI, JPM, and BONY late last night to</p> <p>15   transfer the positions funded by the Fed's three</p> <p>16   financing programs (OMO, TSLF and PDCF) to</p> <p>17   Barclays for funding CLB today."</p> <p>18       And my question is were you involved</p> <p>19   in those discussions that night?</p> <p>20       A. No, I was not.</p> <p>21       Q. Do you know anything about what took</p> <p>22   place that night with respect to those</p> <p>23   discussions?</p> <p>24       A. No, I do not.</p> <p>25       Q. Okay. If you look further down the</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 e-mail, which contains a list of the</p> <p>3 logistics -- it's entitled Logistics of</p> <p>4 Collateral Movements?</p> <p>5       A. Uh-huh.</p> <p>6       Q. Do you see that? And it's a listing</p> <p>7 of seven items.</p> <p>8       Were you involved in any of those</p> <p>9 logistical efforts to move collateral?</p> <p>10      A. I'm sorry, can you repeat the</p> <p>11 question?</p> <p>12      Q. Do you know what these seven items are</p> <p>13 referring to?</p> <p>14      A. No.</p> <p>15      Q. Were you involved in any of the items</p> <p>16 or in trying to give effect to any of the items</p> <p>17 listed in this list?</p> <p>18      A. No, I was not involved.</p> <p>19      Q. If you look at number 6, it mentions</p> <p>20 book free repos. Do you see that?</p> <p>21      A. Yes, I do.</p> <p>22      Q. Can you tell me what free repos are?</p> <p>23      A. I don't know how it applies here. The</p> <p>24 notion of free repo is that you normally are</p> <p>25 delivering without getting payment at the same</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 time. So you would give collateral before you</p> <p>3 get paid.</p> <p>4       Q. Okay.</p> <p>5       A. I don't know if that's what this is</p> <p>6 referring to. So I know what a free repo is. I</p> <p>7 just don't know how it relates to this</p> <p>8 transaction.</p> <p>9       Q. And under what context have you seen</p> <p>10 "free repos" used?</p> <p>11      A. I can't recall.</p> <p>12      Q. Okay. How about further down where it</p> <p>13 says, "Funding Considerations" and then it</p> <p>14 mentions "shell trades." Is that a phrase you</p> <p>15 have ever used in your work at Lehman?</p> <p>16      A. Yeah, the shell normally refers to the</p> <p>17 collateral types that people -- that we were</p> <p>18 going to pledge, and the shell normally refers</p> <p>19 to kind of like the schedule of collateral that</p> <p>20 we are going to book. But again, I don't know</p> <p>21 how that phrase fits into this protocol.</p> <p>22      Q. Fair to say you had no involvement in</p> <p>23 this protocol mentioned in this e-mail?</p> <p>24      A. Yes, that's accurate.</p> <p>25      Q. Is it also fair to say that the group</p>
Page 136	Page 137
<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 that you managed at Lehman was not involved in</p> <p>3 this protocol?</p> <p>4       A. No, there would be people that, you</p> <p>5 know, know settlements and know operations that</p> <p>6 would have been, you know, involved and helpful</p> <p>7 to, you know, understanding what is the best way</p> <p>8 to get this transaction settled.</p> <p>9       So, as I said, John Feraca, you know,</p> <p>10 clearly was involved. There's another guy,</p> <p>11 Larry Servidio. So my people know the</p> <p>12 settlement processes, but they're not</p> <p>13 responsible for the settlement itself.</p> <p>14      Q. So --</p> <p>15      A. So they would take their knowledge and</p> <p>16 ask for input and advice about how to get some</p> <p>17 of these things done.</p> <p>18      Q. And so were they reporting to people</p> <p>19 within the Treasury Department with respect to</p> <p>20 doing this?</p> <p>21      A. No, they would be reporting to me.</p> <p>22      Q. But you weren't really monitoring what</p> <p>23 they were doing with respect to this</p> <p>24 transaction?</p> <p>25      A. No, because the responsibility for</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 this trade would have been in Treasury.</p> <p>3       Q. Okay.</p> <p>4       A. It would have been, you know, through</p> <p>5 Ian Lowitt, Paolo Tonucci, Robert Azerad. My</p> <p>6 folks were there just to provide advice, provide</p> <p>7 input, have suggestions, because they do have an</p> <p>8 understanding of all this.</p> <p>9       Q. Okay. Did you ever have discussions</p> <p>10 with your people, Mr. Feraca or Mr. Servidio,</p> <p>11 about this process?</p> <p>12      A. I've talked to John Feraca about it.</p> <p>13      Q. Uh-huh.</p> <p>14      A. I didn't talk about this process per</p> <p>15 se, but the general process, and the only -- the</p> <p>16 primary input was the amount of effort it was</p> <p>17 taking to get this done, the amount of people</p> <p>18 that needed to be involved, and the time, you</p> <p>19 know, the late nights that everyone was working</p> <p>20 to facilitate this result.</p> <p>21      Q. Did he mention any problems that arose</p> <p>22 during the course of this transaction?</p> <p>23      A. Not specifically, no.</p> <p>24      Q. Did he mention generally any problems</p> <p>25 that arose during this effort?</p>

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. Not specific ones. Not specifically,  
3       no.  
4       Q. I meant did he mention any general  
5       problems that arose during that transaction?  
6       A. No, he didn't bring any of the  
7       specific problems or the general problems to me.  
8       Q. Was he there all that weekend while  
9       you were out of town?  
10      A. I don't know.  
11      Q. Okay.  
12      (Exhibit 125, covering e-mail with  
13      chart with the heading "Booking Amounts,"  
14      marked for identification, as of this date.)  
15      Q. Mr. Coghlan, I'm going to hand you two  
16      exhibits. One has previously been marked as  
17      Exhibit 60B and the other one was marked as  
18      Exhibit 125.  
19      I understand your name does not appear  
20      on these, the covering e-mails. My questions  
21      are really directed at the two charts that are  
22      attached to them. So if you might take a second  
23      or a minute just to look at the two charts.  
24      MR. STERN: Well, look at the whole  
25      document. Start with 60B --

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. No.  
3       Q. -- in connection with the Fed funding?  
4       Do you have any understanding of the  
5       amounts that were pledged as collateral to the  
6       Fed during the week of September 15?  
7       A. No.  
8       Q. Do you have any understanding of the  
9       phrase, what the phrase "Paydown Amount" could  
10      mean in this context?  
11      A. That's the first I've heard of it.  
12      Q. Turn to the chart attached to the next  
13      exhibit. Have you ever seen this chart before?  
14      A. No, I have not.  
15      Q. You have any understanding what the  
16      phrase "booking amounts" would mean in  
17      connection with this chart?  
18      MR. STERN: Objection.  
19      A. I'm sorry. Rephrase the question.  
20      Q. Do you have any understanding what the  
21      phrase "booking amounts" could mean with respect  
22      to this chart?  
23      A. No, I do not.  
24      Q. Do you know who at Lehman or if you  
25      could suggest who at Lehman might have been

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. Which one am I going to --  
3       MR. STERN: Start with 60B.  
4       Q. Have you had a chance to look at the  
5       two documents?  
6       A. I have.  
7       Q. Let's turn to the one attached to  
8       Exhibit 60B. Have you ever seen this chart  
9       before?  
10      A. No, I have not.  
11      Q. Have you ever seen a chart like this  
12      before?  
13      A. No, I have not.  
14      Q. Do you have any understanding what  
15      this could be relaying?  
16      MR. STERN: Objection to the form.  
17      Calling for speculation.  
18      A. No, I -- I'm trying to -- I just don't  
19      understand it.  
20      Q. Do you have any understanding of the  
21      phrase "Anticipated Prefunding Dollar Amount"  
22      used in the upper right-hand corner?  
23      A. No.  
24      Q. Have you ever heard that phrase  
25      used --

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       handling charts like this for this Fed funding  
3       program?  
4       A. No, I don't know who would be putting  
5       these things together.  
6       Q. Okay. Fair enough.  
7       Mr. Coghlan, I'm handing you a copy of  
8       an exhibit previously marked as Exhibit 21,  
9       which is an e-mail stream dated September 18 in  
10      which you are a recipient.  
11      A. Uh-huh.  
12      Q. If you could take a minute just to  
13      review the document.  
14      MR. STERN: Start from the bottom.  
15      (Document review.)  
16      A. Okay.  
17      Q. Have you had a chance to look at the  
18      document?  
19      A. Yes, I have.  
20      Q. Have you ever seen this document  
21      before?  
22      A. Not to my -- not to my best  
23      recollection.  
24      Q. Do you recall receiving this e-mail?  
25      A. No, I do not.

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q. On or about September 18?</p> <p>3       A. No, I do not.</p> <p>4       Q. Let's look down at the bottom where</p> <p>5 you have an e-mail from Mr. Reilly to Mr. Lowitt</p> <p>6 and Gelband. Do you see the e-mail I'm talking</p> <p>7 about?</p> <p>8       A. Yes.</p> <p>9       Q. It says "open issues on deal"?</p> <p>10      A. Uh-huh.</p> <p>11      Q. The first issue that he mentions</p> <p>12 involves auction rate book, and it says, "We</p> <p>13 have been making the assumption this is going.</p> <p>14 I am not sure BarCap knows that and assume there</p> <p>15 could be no auction process if it stayed. Can</p> <p>16 we leave it behind?"</p> <p>17      Do you recall any discussions during</p> <p>18 this week about the auction rate book?</p> <p>19      A. No.</p> <p>20      Q. Did you have any discussions with Mr.</p> <p>21 Tonucci or Reilly or Lowitt or Gelband about</p> <p>22 that topic?</p> <p>23      A. To the best of my knowledge, no.</p> <p>24      Q. Is that a topic -- what is the auction</p> <p>25 rate book?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A. Auction rate securities are securities</p> <p>3 that are long dated securities that coupon or</p> <p>4 the dividend reset on a 30-day, 60-day,</p> <p>5 whatever, you know, on a short-term basis. So</p> <p>6 you have this process where you auction the</p> <p>7 coupon or the dividend and the auction</p> <p>8 determines what that coupon or the dividend is.</p> <p>9 That's a book that's not under my jurisdiction.</p> <p>10 It was managed ultimately by Eric Felder.</p> <p>11      Q. That was going to be my question.</p> <p>12 That is not a book that's involved in your</p> <p>13 financing business?</p> <p>14      A. No. No. It's an inventory position</p> <p>15 that the firm would own, and that, you know,</p> <p>16 book is managed not by Eric himself, but for</p> <p>17 people that work for Eric.</p> <p>18      Q. So if we look up toward the top of the</p> <p>19 page, it says, "Eric should dig in on auction</p> <p>20 rates." Do you take that to be referring to</p> <p>21 Eric Felder?</p> <p>22      A. Yes.</p> <p>23      Q. Okay. So that would be an issue that</p> <p>24 he would probably handle?</p> <p>25      A. Uh-huh.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q. Okay. The second item on the list</p> <p>3 toward the bottom mentions something called "PB</p> <p>4 financing balances" --</p> <p>5       A. Uh-huh.</p> <p>6       Q. -- "left in LBI."</p> <p>7       What are PB financing balances?</p> <p>8       A. Those would be equity financing that</p> <p>9 we've done where we're financing long positions</p> <p>10 for clients in the equity financed space. So</p> <p>11 this would be referring that there was still</p> <p>12 client balances that have not been returned. So</p> <p>13 that's what the PB financing balances would be.</p> <p>14      Q. What does "PB" stand for?</p> <p>15      A. Prime brokerage.</p> <p>16      Q. Okay. And it says, "Looks like we</p> <p>17 will have PB financing balances left in LBI, and</p> <p>18 according to Cogs, they do not want it."</p> <p>19      That "Cogs" is referring to you,</p> <p>20 correct?</p> <p>21      A. I would believe so, yes.</p> <p>22      Q. And do you recall any discussions as</p> <p>23 to this issue?</p> <p>24      A. The conversation I do recall is the</p> <p>25 one I talked about with Marty Malloy in the</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 beginning of the week, that I approached him, as</p> <p>3 I said, to discuss, you know, what positions</p> <p>4 would be transferred over to Barclays and, you</p> <p>5 know, got a response from him that they would</p> <p>6 not be taking the positions over.</p> <p>7       So this is, I think, referring to me</p> <p>8 relaying that information that, you know, the PB</p> <p>9 balances or the PB financing positions would not</p> <p>10 be transferring to Barclays.</p> <p>11      Q. Okay. I guess I misunderstood your</p> <p>12 prior testimony. I thought you said it was</p> <p>13 mainly a discussion about transitioning the</p> <p>14 business. Did you actually go over --</p> <p>15      MR. STERN: Objection to the form.</p> <p>16      Q. -- go over the securities they did or</p> <p>17 did not want to be transferred to Barclays?</p> <p>18      A. No, we did not get into that detail,</p> <p>19 no.</p> <p>20      Q. Okay. And why did you think that Mr.</p> <p>21 Malloy or Barclays did not want the PB financing</p> <p>22 balances?</p> <p>23      A. I don't know --</p> <p>24      Could you restate the question?</p> <p>25      Q. You might have just said it. I just</p>

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1           HIGHLY CONFIDENTIAL - J. COGHLAN  
2   want to understand it. Is it correct to say  
3   that you got the impression based on your  
4   meeting with Mr. Malloy that Barclays did not  
5   want the PB financing balances transferred to  
6   it?  
7       A. Yes.  
8       Q. And why was that?  
9       A. I was not given a reason. I was just  
10   told that it was Marty's understanding that the  
11   fixed income repo and the PB financing would not  
12   be going over to Barclays, you know, when the  
13   deal closed.  
14       Q. So your understanding that you got  
15   from Mr. Malloy was that not just -- they did  
16   not just want the PB financing; they didn't want  
17   the other three items you just mentioned,  
18   correct?  
19       MR. STERN: Objection to the form.  
20       A. I --  
21       Q. Let me rephrase the question.  
22       Did the position that you understood  
23   after your conversation with Mr. Malloy relate  
24   only to PB financings or other types of  
25   securities?

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1           HIGHLY CONFIDENTIAL - J. COGHLAN  
2   Markets, so, you know, he may have had a  
3   conversation with me or I may have had a  
4   conversation with him, you know, reflecting, you  
5   know, what I learned after speaking to Marty  
6   Malloy, but I don't recall that specifically.  
7       Q. Okay. Is it likely that you reported  
8   back to him based on your conversation -- about  
9   what took place in your conversation with Mr.  
10   Malloy?  
11       A. It's likely that I told somebody that  
12   Barclays was not going to be taking the  
13   financing positions. Who I reflected that to I  
14   can't recall.  
15       Q. Okay. If you look further up on the  
16   e-mail, it says, "Wickham should answer PB."  
17       What do you understand that to mean?  
18       A. Well, John ran the prime brokerage.  
19   So I would think they're just trying to say, you  
20   know, Wickham should provide the answer about  
21   what to do about the PB balances that are left.  
22       Q. And do you recall what answer he  
23   provided?  
24       A. No, I do not.  
25       Q. Were you party to any further

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1           HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. All financings. All the financings  
3   that were residing in LBI, fixed income and  
4   equities.  
5       Q. So that would be all the financings  
6   that are managed by your group?  
7       A. Yes.  
8       Q. And you understood, based on your  
9   conversations with him, that Barclays was not  
10   going to be taking them over?  
11       A. Correct.  
12       Q. Okay. If you see that line goes  
13   further, it says, "What does it mean to leave it  
14   behind?"  
15       Do you have any understanding what the  
16   discussion was on that point?  
17       A. I do not recall.  
18       Q. Do you recall any discussions with any  
19   of these folks here, Mr. Reilly, Lowitt,  
20   Gelband, Tonucci or Kelly, about this issue?  
21       A. No, I don't remember any conversations  
22   relative to this.  
23       Q. Would you have told Mr. Reilly this,  
24   because he says "according to Cogs"?  
25       A. Mr. Reilly was the CFO for Capital

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1           HIGHLY CONFIDENTIAL - J. COGHLAN  
2   discussions about the PB balances after this  
3   e-mail?  
4       A. Not that I recall.  
5       Q. Okay. If you continue on that line,  
6   it says -- toward the end, it says, "Third  
7   question is definitely for Cogs." That's you,  
8   right?  
9       A. Uh-huh.  
10       Q. Let's look at the third question.  
11   "Not clear on the amount of block discount or  
12   how we make it happen."  
13       Do you understand what that means?  
14       A. No.  
15       Q. If you read this whole item number 3,  
16   do you have any recollection about discussions  
17   on any of these issues mentioned there?  
18       A. No, I do not recall having any  
19   conversations on these issues.  
20       Q. Do you have any understanding of what  
21   these issues are referring to?  
22       A. No, I don't -- I don't understand what  
23   this paragraph means.  
24       Q. Well, "The third question is  
25   definitely for Cogs," was this question posed to



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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       you?  
3       A.   I don't recall.  
4       Q.   Did you have to take any action after  
5       receiving this e-mail because the third question  
6       was definitely for you?  
7       MR. STERN: Objection to the form.  
8       A.   I don't recall having any discussion  
9       relative to the issues over which is discussed  
10      in this paragraph. I don't --  
11      Q.   My question was, did you take any  
12      action as a result of receiving this e-mail  
13      which points to the third question as being  
14      definitely for you?  
15      A.   I don't recall that we took any  
16      action.  
17      Q.   Did you have any meetings with anyone  
18      about this e-mail?  
19      A.   I don't recall.  
20      Q.   So let's look at number 3. It says,  
21      "Not clear on the amount of the block discount."  
22      Do you know what block discount that's  
23      referring to?  
24      A.   I never heard that phrase before.  
25      Q.   You've never heard the phrase "block

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       discount" means.  
3       Q.   Did you have any understanding?  
4       A.   No.  
5       Q.   Can you speculate about what it's  
6       referring to in this context?  
7       MR. STERN: Objection. Calls for  
8       speculation.  
9       A.   I couldn't speculate. I don't know.  
10      Q.   You have absolutely no idea what the  
11      phrase "block discount" means in this context?  
12      MR. STERN: Objection.  
13      A.   This is the first I've ever heard the  
14      term "block discount," so I have no  
15      understanding of what that term means.  
16      Q.   Let's go to the next sentence. Well,  
17      let's go to the remainder of that sentence where  
18      it talks to "how we make it happen."  
19      Do you recall any discussions about  
20      how we -- how Lehman could make happen any kind  
21      of discount?  
22      A.   No.  
23      Q.   Do you have any understanding what  
24      that was referring to about "how we make it  
25      happen"?

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       discount"?  
3       A.   No, I don't know what that means.  
4       Q.   Did you ask someone when you received  
5       this e-mail, what does "block discount" mean?  
6       A.   I don't recall that, no.  
7       Q.   Would you have asked someone what are  
8       you talking about when you referred this  
9       question to me?  
10      MR. STERN: Objection to the form.  
11      A.   I don't recall acting on this -- on  
12      this issue. I don't understand what it means in  
13      this e-mail and I don't recall addressing it  
14      during the week of the, whatever, the 15th.  
15      Q.   Did you ask anyone what this means?  
16      MR. STERN: Objection to the form.  
17      A.   I don't recall discussing this issue.  
18      First of all, I'm not sure what this issue is on  
19      the e-mail, and I don't -- discuss -- I don't  
20      remember -- recall discussing this issue.  
21      Q.   Do you have any understanding what the  
22      phrase "block discount" means in this context?  
23      MR. STERN: Objection. Asked and  
24      answered.  
25      A.   I don't know what the phrase "block

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A.   I don't have any recollection of  
3       how -- what that means or having any discussion  
4       about it.  
5       Q.   The next sentence says, "Defaulting on  
6       repo could be the best, as discount could be  
7       taken from haircut."  
8       What does that mean?  
9       MR. STERN: Objection to the form.  
10      A.   I don't know. I mean, I -- it's very  
11      confusing. I don't know what it means.  
12      Q.   Do you recall any discussion about  
13      defaulting on a repo during this week, the week  
14      of September 15?  
15      A.   I'm sorry, say the question again.  
16      Q.   Do you recall having any discussions  
17      with anyone about defaulting on a repo during  
18      the week of September 15?  
19      A.   We did have situations where we were  
20      defaulting not on repo, but on stock loans, and  
21      so we had situations where we did default and  
22      people put us in default, but that was third  
23      parties defaulting us for failure to operate  
24      under the contract.  
25      But it had -- it has nothing to do

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       with what's being -- I don't even know what's  
3       being discussed here, what this is referring to.  
4       Q.   How do you know it has nothing to do  
5       with it?  
6       A.   Because I don't understand what  
7       this -- what this means.  
8       Q.   Let's just take a step back from this.  
9       On a normal repo, what happens when the party  
10      who transferred the collateral defaults?  
11      A.   So --  
12      Q.   Let's just posit a situation like we  
13      talked about earlier. One party A is going to  
14      give you \$50 million in collateral?  
15      A.   Uh-huh.  
16      Q.   And you're going to give me \$45  
17      million in cash?  
18      A.   Right.  
19      Q.   What happens if I default under normal  
20      circumstances?  
21      A.   I'm sorry, can you just go through --  
22      your party?  
23      Q.   If I'm the party that is giving you  
24      have \$50 million in collateral?  
25      A.   You're giving me collateral. I'm

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       would give me \$105 million in collateral. You  
3       default. I call you up and say give me back my  
4       cash.  
5       Q.   Right.  
6       A.   You said I can't do that. So I put  
7       you in default.  
8       Q.   Okay.  
9       A.   I take your collateral, I sell it,  
10      okay? And liquidate it.  
11      Q.   Okay.  
12      A.   And I use that extra 5 percent to pay  
13      off my principal, my 100 million that I lent  
14      you.  
15      Q.   Do you pay off anything else with it?  
16      A.   No. I just have to pay that off.  
17      Now, to the extent there's a deficit,  
18      I take a loss. So if your collateral is only  
19      worth 98 million, I lose money; and if your  
20      collateral is worth still 105, I would have to  
21      return the 5 million excess to you.  
22      Q.   Okay. That's the normal course of  
23      business in the event of a default?  
24      A.   Yes.  
25      Q.   Does that change at all in the event

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       going to give you cash.  
3       Q.   You're giving me 45 million in cash?  
4       A.   Right.  
5       Q.   What happens under normal  
6       circumstances if I default?  
7       A.   If you -- the person who borrowed the  
8       cash?  
9       Q.   Yes.  
10      A.   The party that has the collateral  
11      would take the collateral, liquidate the  
12      collateral, and pay off the loan.  
13      Q.   And do you get to keep the haircut?  
14      A.   Only to the extent that it covers your  
15      principal. To the extent that it's larger than  
16      your principal, you're required to return that.  
17      Q.   Why are you required to do that?  
18      A.   Because the collateral is there only  
19      to pay down principal.  
20      Q.   So, just so I understand, in our  
21      hypothetical if I defaulted, you would liquidate  
22      the \$50 million in collateral and then do what?  
23      A.   Well, normally what I would have is  
24      I'd have -- let's go back to my example. I  
25      would give you \$100 million in cash and you

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       of a bankruptcy?  
3       A.   Well, no, because what I described was  
4       a situation where the governing document would  
5       have been a GMRA or, you know, or a stock loan  
6       agreement.  
7       In the bankruptcy, those contracts are  
8       no longer valid. The bankruptcy court is, you  
9       know, running the outcome. So, in an event of a  
10      bankruptcy, I believe it's different.  
11      Q.   How is it different?  
12      A.   I'm not a lawyer. I don't know.  
13      Q.   How do you believe it differs?  
14      A.   Because if the entity is bankrupt, it  
15      can't operate any longer, it can't honor the,  
16      you know, move cash and collateral back and  
17      forth and so your rights, you know, under that  
18      are different because, you know, I think the  
19      bankruptcy proceedings are different.  
20      What I described is when an entity is  
21      still operating and they just default under the  
22      agreement.  
23      Q.   So whose rights are different in the  
24      bankruptcy context?  
25      MR. SCARING: I'm going to object to

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 that.  
3 A. I'm not qualified -- what I described  
4 to you is the normal operating procedure in  
5 entities that are still viable that are governed  
6 by traditional financing contracts.  
7 Q. Okay.  
8 A. What happens in bankruptcies, I'm not  
9 qualified to discuss what -- I just don't know.  
10 Q. Do you have any experience in  
11 bankruptcies other than the one that we're  
12 talking about here?  
13 A. No.  
14 Q. Okay. Do you have any experience in  
15 defaults in the bankruptcy context other than  
16 the Lehman situation?  
17 A. No.  
18 Q. Okay. Did you ever discuss with  
19 anyone during this week what happens to the  
20 collateral in the event of a default?  
21 MR. STERN: Objection to the form.  
22 What week?  
23 Q. The week of September 15.  
24 A. Well, as I said, we were -- LBI was  
25 still operating.

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 the course of the day, you know, the speed is --  
3 so to know exactly what the cash flows were on a  
4 trade-by-trade basis would be difficult to  
5 monitor, you know, given the circumstances.  
6 Q. Do you know of any situation where  
7 Lehman was put in default during that week and  
8 received back part of the haircut?  
9 A. I don't know that. I don't recall,  
10 no.  
11 Q. Who would know that?  
12 A. I don't know.  
13 Q. Were there any situations during that  
14 week where Lehman was the provider of the cash  
15 in the transaction where Lehman was declared in  
16 default?  
17 A. Yes, I believe so.  
18 Q. Do you know which entities declared  
19 Lehman in default in that context?  
20 A. I don't know off, you know, off the  
21 top of my head, no.  
22 Q. And what happened in those situations?  
23 Did Lehman liquidate the collateral?  
24 A. No, the counterparty would be  
25 liquidating us. If we lent them the cash, if we

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 Q. Right.  
3 A. We had contracts that govern our  
4 behavior. To the extent that we could not  
5 operate as per the requirements of the contract,  
6 parties were able to put us in default. That in  
7 fact happened.  
8 Q. Which parties put you in default?  
9 A. I don't know off the top of my --  
10 various securities lenders. Other  
11 counterparties that did trades with us.  
12 Q. Could you name any of them?  
13 A. I -- I don't recall which ones did and  
14 didn't.  
15 Q. So, in those default situations that  
16 you mentioned, was Lehman the lender of the  
17 collateral or was Lehman --  
18 A. Both. Lehman would be both.  
19 Q. So, in the situations where Lehman was  
20 lending collateral and it was declared in  
21 default, did Lehman get back any excess  
22 collateral after it was liquidated?  
23 A. I -- I don't know. I don't -- I just  
24 can't answer that question. I mean, there's so  
25 many transactions that are going through during

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1 HIGHLY CONFIDENTIAL - J. COGLAN  
2 couldn't get back, they would take out cash back  
3 and then they would just buy us in.  
4 Q. What do you mean, what does "buy us  
5 in" mean?  
6 A. In a stock trade, for example, if you  
7 are State Street and you gave me \$100 million  
8 worth of IBM, you would put us in default  
9 because I can't return the IBM. I may not have  
10 been able to return the IBM because I couldn't  
11 get it back from the person I lent it to.  
12 So then I couldn't deliver back to a  
13 State Street -- this is just an academic  
14 example -- State Street that collateral. So  
15 they would have the right to put us in default  
16 because I couldn't make delivery, and then they  
17 would buy us in the collateral that we owed  
18 them.  
19 Q. I guess I just don't understand the  
20 phrase "buy us in." What does that mean?  
21 A. So they gave me \$100 million worth of  
22 IBM, and they would have to go back and buy it,  
23 you know, because I couldn't make delivery to  
24 them. They want it back. I couldn't make  
25 delivery to them. So they would go into the

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2 marketplace on the exchange, buy \$100 million  
3 worth of IBM, and hopefully they had enough  
4 margin to make sure that they were made whole.  
5       Q. And if they had extra, what would they  
6 do?  
7       A. I believe they over time would have to  
8 return it to us, but, you know, again, that's  
9 something for counsel to discuss.  
10       Q. I understand that. I'm not asking a  
11 legal question.  
12       Do you recall any questions -- any  
13 discussions during this week about the issues  
14 you and I have just been talking about?  
15       A. I -- can you restate the question,  
16 please?  
17       Q. Do you recall any discussions during  
18 this week of September 15th through the closing  
19 of the sale transaction the following Monday  
20 concerning what happens in the event of a  
21 default of a repo?  
22       A. I'm sorry, I just don't understand the  
23 question.  
24       Q. Did you have any discussions with  
25 anyone at Lehman during this week of November --

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2       MR. STERN: I assume you want to  
3 finish this line of questions, but at some  
4 point we should figure out a time for lunch.  
5       MR. HINE: Yeah.  
6       Q. Are you okay for a little bit?  
7       A. Sure. Sure.  
8       Q. So, putting aside conversations you  
9 might have had with counsel during that week,  
10 did you have any conversations with business  
11 people, including Mr. Reilly or Lowitt or  
12 Gelband or Tonucci or Kelly, about the  
13 consequences of a default under a repo?  
14       A. I don't recall having those  
15 conversations, no.  
16       Q. Do you have any recollection of these  
17 folks talking amongst themselves or this being  
18 an issue for consideration during that week?  
19       A. Not to the best of my knowledge. I  
20 just don't know.  
21       Q. Why do you think he would be writing  
22 you an e-mail about -- which discusses  
23 defaulting on repos?  
24       A. I --  
25       MR. STERN: Objection to the form.

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2 of September 15 about what happens to the  
3 collateral in the event of a default of a repo?  
4       A. No. I would say we hadn't talked  
5 about the collateral, no.  
6       Q. Did you have any discussion with  
7 anyone at Lehman during this week about anything  
8 to do with what happens in the event of a  
9 default on the repo?  
10       A. Yes, I was talking to counsel around  
11 some of the defaults and, you know, and what,  
12 you know, do we need to do relative to defaults.  
13       Q. Okay.  
14       A. So I was letting counsel know that we  
15 were, you know, defaulting and then we were  
16 getting notices to support those defaults.  
17       Q. Now you're talking about Lehman's  
18 in-house counsel?  
19       A. Yes.  
20       Q. I don't want to talk about --  
21 conversations with counsel are privileged  
22 conversation. I want to talk about any  
23 conversation you might have had with business  
24 people at Lehman about the consequences of an  
25 event of default under a repo.

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1       HIGHLY CONFIDENTIAL - J. COGLAN  
2 Calls for speculation.  
3       A. Well, it's unclear to me what this  
4 says and what it means. That's one issue. And  
5 the second issue is I never -- I don't recall  
6 having conversations about defaulting on repos  
7 as it relates to the Barclays transaction or the  
8 transfer of assets.  
9       Q. Could this possibly suggest that they  
10 were discussing whether defaulting on the repo  
11 could be used as a means to give Barclays a  
12 discount because the assets would be taken from  
13 the haircut?  
14       MR. STERN: Objection to the form.  
15       A. I don't -- I don't have an  
16 understanding of what this says. I don't recall  
17 discussing this, so what this means as a --  
18 relative to the Barclays transaction -- I don't  
19 even know if it's related to the Barclays  
20 transaction, per se. So it would be impossible  
21 for me to -- to know the answer to that  
22 question.  
23       Q. Could you speculate at all about what  
24 this sentence means? I'm talking about the  
25 sentence that starts, "Defaulting on repo could

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 be the best as discount could be taken from  
3 haircut."

4 MR. STERN: Objection to the form.  
5 Calls for speculation.

6 A. I don't know what this means. I don't  
7 know what they're proposing. I don't know --

8 Q. Could you posit any plausible  
9 explanation for what this means?

10 MR. STERN: Objection. Calls for  
11 speculation.

12 A. I don't have -- I don't know what it  
13 means. I -- I can't surmise what it means.

14 Q. You're the guy at Lehman that they  
15 would ask repo questions to, right?

16 A. Absolutely.

17 MR. STERN: Objection to the form.

18 Q. Why would they --

19 MR. STERN: That's a  
20 mischaracterization of what he said.

21 Q. And they clearly identified this  
22 question as definitely for you, right?

23 MR. STERN: Objection to the form.

24 A. In the e-mail it says that, "The third  
25 question is definitely one that should be

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 reviewed with Cogs."

3 Q. And you have no recollection of ever  
4 reviewing this question with anyone?

5 A. I do not have any recollection.

6 Q. Do you think you ever reviewed this  
7 question with anyone?

8 A. To the best of my knowledge, no.

9 Q. You think you ever tried to address  
10 any portions of this question with anyone?

11 A. To the best of my knowledge, no.

12 Q. Let's continue on the item number 3.

13 It says, "If not that" --

14 MR. STERN: Excuse me, Bill. How much  
15 longer are you going to go on this? Because  
16 we should have a chance to take a lunch  
17 break, I think.

18 MR. HINE: I'm planning on taking a  
19 lunch break. Can we go another five, ten  
20 minutes?

21 MR. STERN: Five, ten minutes? Okay.

22 MR. HINE: I would like to exhaust  
23 this one topic.

24 MR. STERN: I think you have, but go  
25 ahead.

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Q. The next sentence says, "If not that,  
3 then we need to give business an allocation of  
4 block discount so they can mark down the books  
5 tonight."

6 Does that ring any bells about what  
7 was being discussed on this issue?

8 A. No. Again, I don't know what the  
9 phrase "block discount" means.

10 Q. Do you recall any recollection of  
11 people talking about marking down the books  
12 tonight?

13 A. I do not recall that.

14 Q. Did Lehman mark down any of its books  
15 during the week of September 15, to your  
16 knowledge?

17 A. Not to my knowledge.

18 Q. Did --

19 A. I don't know if they did or they  
20 didn't.

21 Q. Okay. Would you know that under  
22 normal circumstances?

23 A. No. Not necessarily, no.

24 Q. When it says "mark down the books,"  
25 what books would that be referring to?

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1 HIGHLY CONFIDENTIAL - J. COGHLAN

2 MR. STERN: Objection. Calls for  
3 speculation.

4 A. I don't know.

5 Q. Could you posit any explanation for  
6 what that sentence might mean?

7 MR. STERN: Objection. Calls for  
8 speculation.

9 A. No, there was something about marking  
10 down books, you know, and marking the books,  
11 which is obviously in here, but, you know,  
12 again, it's -- I just don't know what it means.  
13 I can't really put it into context and, you  
14 know, when they say "give business," I don't  
15 know what business means. There were literally  
16 dozens of business in Lehman Brothers. So it  
17 may not even be referencing the financing  
18 business.

19 Q. Well, it's talking about allocating a  
20 discount among businesses, some businesses,  
21 right?

22 MR. STERN: Objection to the form.

23 A. Ask the question again.

24 Q. It's talking about allocating some  
25 sort of discount among businesses, correct?

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       MR. STERN: Objection to the form.</p> <p>3       A. The letter says something to the</p> <p>4 effect of an allocation of a block discount.</p> <p>5 Where and how that's done I have no</p> <p>6 recollection. I have no understanding of how,</p> <p>7 you know, the asset transfer, you know, took</p> <p>8 place. I wasn't involved in those discussions,</p> <p>9 so I don't understand because I wasn't part of</p> <p>10 it, you know, what this, I think, refers to.</p> <p>11       Q. As the manager of one of Lehman's</p> <p>12 businesses, were you ever allocated any form of</p> <p>13 discount during that week?</p> <p>14       A. Not to my knowledge, no.</p> <p>15       Q. Were you ever asked to mark down any</p> <p>16 of your books during that week?</p> <p>17       A. Not to my knowledge, no.</p> <p>18       Q. Did you ever mark down any of your</p> <p>19 books that week?</p> <p>20       A. I -- not to my knowledge. I don't</p> <p>21 know.</p> <p>22       Q. Who would know about within your</p> <p>23 financing business?</p> <p>24       A. In the normal course of business, we</p> <p>25 would mark to market positions. Given the fact</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2 that the goal was to return collateral as</p> <p>3 quickly as possible, we were more focused on</p> <p>4 that. And I'm not sure, I don't recall what</p> <p>5 marking we were doing on an overnight basis</p> <p>6 during that week.</p> <p>7       Q. So you have no recollection of marking</p> <p>8 down any of your books during that week?</p> <p>9       A. No, I do not.</p> <p>10       Q. The next sentence in that number 3</p> <p>11 says, "Does that create a problem as it could</p> <p>12 tip the broker early?" Do you have any</p> <p>13 understanding what that could be referring to?</p> <p>14       MR. STERN: Objection. Calls for</p> <p>15 speculation.</p> <p>16       A. No.</p> <p>17       Q. Could that be talking about tipping</p> <p>18 the broker, meaning LBI, into bankruptcy early?</p> <p>19       MR. STERN: Objection. Calls for</p> <p>20 speculation.</p> <p>21       A. I don't -- I don't know.</p> <p>22       Q. Is that a possible reading of that</p> <p>23 sentence?</p> <p>24       A. It is a possible reading of that</p> <p>25 sentence.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       MR. STERN: Objection. Objection.</p> <p>3       Calls for speculation.</p> <p>4       Q. Do you have any knowledge one way or</p> <p>5 another whether that's a viable reading of that</p> <p>6 sentence?</p> <p>7       MR. STERN: Objection.</p> <p>8       A. I have no knowledge one way or the</p> <p>9 other.</p> <p>10       Q. Okay. In the last sentence in that</p> <p>11 number, number 3, says, "Would we rather have</p> <p>12 that be in the sale price tomorrow?"</p> <p>13       Do you have any understanding what</p> <p>14 that is talking about?</p> <p>15       A. No.</p> <p>16       Q. Do you know, have any understanding</p> <p>17 that tomorrow is the hearing before the</p> <p>18 bankruptcy court?</p> <p>19       A. No, I was not aware of that.</p> <p>20       Q. Do you have any understanding that the</p> <p>21 sale price relates in any way to the APA or the</p> <p>22 transaction between Barclays or Lehman?</p> <p>23       A. No, I do not.</p> <p>24       Q. Do you have any recollection of any</p> <p>25 discussions along those lines during that week?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A. Can you rephrase the question?</p> <p>3       Q. Do you have any recollection of any</p> <p>4 discussions along the lines of changing the sale</p> <p>5 price?</p> <p>6       A. No, I do not recall any of those</p> <p>7 conversations.</p> <p>8       Q. Do you have any, any recollection of</p> <p>9 any discussions about the sale price that might</p> <p>10 be presented in a court hearing?</p> <p>11       A. No, I was not involved in any of that.</p> <p>12       MR. HINE: Why don't we take a break</p> <p>13 for lunch.</p> <p>14       (Recess; Time Noted: 12:47 P.M.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN 2       AFTERNOON SESSION 3       (Time Noted: 1:43 P.M.) 4       JOHN COGHLAN, resumed and 5       testified further as follows: 6       EXAMINATION BY (Cont'd.) 7       MR. HINE: 8       Q.   Good afternoon, Mr. Coghlan. I'd like 9       you to turn back to Exhibit 21, which is the 10      e-mail chain we discussed just before lunch, if 11      you would. 12      MR. STERN: This is 121? 13      MR. HINE: Yes. 14      MR. SPENCER: No, I'm sorry, it's 15      Exhibit 21. 16      Q.   I'm sorry, Exhibit 21, which is the 17      exhibit we just discussed previously. 18      MR. STERN: 21 is a previously marked 19      exhibit? 20      MR. HINE: It's the last exhibit we 21      looked at. 22      Q.   Do you have the exhibit in front of 23      you? 24      A.   Yes, I do. 25      Q.   And you recall our questions before</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN 2       lunch about this exhibit? 3       MR. STERN: Objection to the form. 4       Q.   Mr. Coghlan, is there any reason you 5       have no recollection about this exhibit at all? 6       MR. STERN: Objection to the form. 7       A.   Can you restate the question? 8       Q.   Well, not to be flip, it just seems 9       odd that in a transaction as big as the 10      Lehman/Barclays transaction, when you receive an 11      e-mail like this, that you have no recollection 12      at all about it. So I'm asking you, is there 13      any reason why you have no recollection at all 14      about it? 15      MR. STERN: Objection to the 16      commentary and objection to the form. 17      You can try to answer why you have no 18      recollection about this. 19      A.   There is no specific reason why I 20      don't recall this, no. 21      Q.   You didn't ignore this e-mail, did 22      you? 23      A.   I don't recall receiving the e-mail so 24      I don't know how I can, you know -- I don't 25      recall receiving it.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN 2       Q.   Okay. Mr. Kirk is a more senior 3       officer at Lehman than you were? 4       A.   Correct. 5       Q.   I take it it's not your normal 6       practice to ignore e-mails from senior officers, 7       correct? 8       A.   Normally if a senior officer asks some 9       information, I would provide information, yes. 10      Q.   You weren't otherwise distracted for 11      any reason that would cause you not to recall 12      this e-mail, is that correct? 13      MR. STERN: Objection to the form. 14      A.   It was a very busy period of time, 15      yes, and things were moving very, very rapidly. 16      So the environment was such, you know, I just 17      don't recall whether I saw this e-mail or not. 18      Q.   Fair to say you didn't get a lot of 19      e-mails from Mr. Kirk during this period? 20      MR. STERN: Objection to the form. 21      A.   I don't recall if I saw e-mails from 22      Mr. Kirk. 23      Q.   Since you moved to Barclays, have you 24      learned anything or developed any kind of 25      understanding about any of the issues we</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN 2       previously discussed about this e-mail? 3       MR. STERN: I think you can answer 4       provided you don't disclose any discussions 5       with counsel, if you have -- I don't know if 6       you've had such discussions with counsel, 7       but you can answer subject to that, if you 8       understand what I'm saying. 9       THE WITNESS: No, I don't. 10      Q.   I'm not asking you about any 11      conversations you've had with counsel. 12      A.   Uh-huh. 13      Q.   So let's put those conversations 14      aside. 15      A.   Uh-huh. 16      Q.   Other than those types of 17      conversations, since you moved to Barclays, have 18      you developed any understanding, heard any 19      discussions about the issues we discussed 20      concerning item number 3 on this e-mail? 21      A.   No, I have not. 22      Q.   So, and not to belabor this, you have 23      not, since you moved to Barclays, you have not 24      heard any discussions or developed any 25      understanding about a block discount associated</p>

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       with the Barclays/Lehman transaction?  
3       A. I have not heard that phrase before,  
4       no.  
5       Q. And since moving to Barclays, have you  
6       heard any conversations or developed any  
7       understanding about defaulting on a repo as it  
8       related to the Barclays/Lehman transaction?  
9       A. No, I have not heard anything to that  
10      effect.  
11      Q. Okay. Let's mark this exhibit.  
12      (Exhibit 126, an e-mail stream, the  
13      first one in time dated September 18, 2008,  
14      at 6:18 A.M., marked for identification, as  
15      of this date.)  
16      Q. Mr. Coghlan, I'm handing you a copy of  
17      an exhibit marked as 126, which is an e-mail  
18      stream dated September 18, 2008, and appears to  
19      be a continuation of the open issues on the  
20      e-mail that we previously discussed.  
21      If you could take a minute just to  
22      review this before I ask you a question.  
23      (Document review.)  
24      Q. Do you see in the middle of the page  
25      there's an e-mail from Mr. Lowitt to Mr. Reilly

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       of the matched book.  
3       Q. How about at some other time?  
4       A. Well, as I stated earlier, the  
5       instructions I got on Monday was to try to get,  
6       you know, the matched book as small as possible.  
7       Q. Right.  
8       A. So that was a guideline I was given on  
9       Monday and a guideline that we operated with  
10      throughout the week. That was always the goal.  
11      The second issue about sitting down  
12      and finalizing the matched book being at 40, I  
13      don't specifically remember having conversations  
14      with Gerry about that.  
15      Q. Just so I understand what you just  
16      said, do you understand the phrase in the first  
17      sentence, "shrink down the matched book," to be  
18      referring to the effort that you were undergoing  
19      during that week to reduce the size of the book  
20      that you managed?  
21      A. I haven't -- I have never seen this  
22      before and I wasn't copied on it, but getting  
23      the matched book smaller was an instruction I  
24      did receive earlier in the week.  
25      Q. Can you --

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       and Gelband in which he says, "Also, need to  
3       figure out how to shrink down matched book  
4       (unless Gerry that hasn't yet been reflected in  
5       balance sheet we looked at yesterday)."  
6       Do you see that?  
7       A. Uh-huh.  
8       Q. The message continues, "Gerry, please  
9       sit with Cogs and Mike to figure out what we  
10      need to do and if balance sheet showing matched  
11      book at 40 is right."  
12      Do you see that?  
13      A. Yes, I do.  
14      Q. That Cogs refers to you, correct?  
15      A. I believe so.  
16      Q. And is it fair to assume that "Mike"  
17      is Mike Gelband in that sentence?  
18      A. I don't know.  
19      Q. Okay. Do you recall any -- I  
20      understand you're not copied on this part of the  
21      e-mail, but do you recall any discussions along  
22      these lines at or about Thursday, September 18,  
23      or thereafter?  
24      A. I don't remember conversations on  
25      Thursday afternoon specifically about the size

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1       HIGHLY CONFIDENTIAL - J. COGHLAN  
2       A. So this may or may not be consistent  
3       with that, I don't know.  
4       Q. Can you think of any other thing that  
5       the phrase "shrink down the matched book" could  
6       be referring to?  
7       A. No, it -- I was told to get the  
8       matched book smaller. The phrase "shrinking the  
9       matched book" is consistent with that.  
10      Q. Okay.  
11      A. But I'm not a hundred percent certain  
12      how it's used in this context since I wasn't  
13      privy to some of the --  
14      Q. But were you privy to any  
15      conversations that followed this e-mail about  
16      that topic?  
17      A. Well, I did have one conversation, as  
18      said, with Gelband when he asked me where I  
19      thought the matched book would be, you know, at  
20      the end of the week. I gave him that number we  
21      discussed, and I remember having those two  
22      conversations about the matched book.  
23      Q. Which two? The one --  
24      A. The first one about getting the  
25      matched book smaller at the beginning of the



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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 week and the second conversation about what I</p> <p>3 thought the projected size of the matched book</p> <p>4 would be at the end of the week which I</p> <p>5 reflected to Gelband.</p> <p>6       Q. I might have misunderstood your prior</p> <p>7 testimony. I just want to clarify something.</p> <p>8       When you gave Gelband the projection</p> <p>9 of 40 billion?</p> <p>10      A. Uh-huh.</p> <p>11      Q. What day of the week was it that you</p> <p>12 gave it to him?</p> <p>13      A. I don't recall, but it was -- it was</p> <p>14 Wednesday or Tuesday.</p> <p>15      Q. Okay. So that would be prior to this</p> <p>16 e-mail?</p> <p>17      A. Yes.</p> <p>18      Q. Correct?</p> <p>19       And so, just so I understand your</p> <p>20 conversation, you had one conversation early in</p> <p>21 the week about shrinking the matched book</p> <p>22 generally?</p> <p>23      A. Yes.</p> <p>24      Q. And one conversation on either Tuesday</p> <p>25 or Wednesday where you gave Mr. Gelband a \$40</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2 billion figure?</p> <p>3      A. Yes.</p> <p>4      Q. Other than those two conversations, do</p> <p>5 you recall any other conversations that week</p> <p>6 about shrinking the matched book or the subjects</p> <p>7 mentioned in this e-mail?</p> <p>8      A. No, I -- I don't recall having other</p> <p>9 conversations.</p> <p>10     Q. Do you think you might have had</p> <p>11 another conversation after this e-mail?</p> <p>12     A. They may have called me and asked to</p> <p>13 verify where I thought the number would be.</p> <p>14 That may have happened.</p> <p>15     Q. Okay.</p> <p>16     A. I don't recall, though.</p> <p>17     Q. Was the matched book in fact at 40 at</p> <p>18 this time?</p> <p>19     A. I don't recall.</p> <p>20     Q. Do you know what it ended up at on</p> <p>21 Friday?</p> <p>22     A. I do not. I don't recall.</p> <p>23     Q. Would you have expected to have</p> <p>24 recalled if it was radically different from 40?</p> <p>25     A. Can you repeat the question?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2      Q. Well, I mean, you gave a projection --</p> <p>3      A. Right.</p> <p>4      Q. -- earlier in the week to Mr. Gelband.</p> <p>5       Do you have any recollection that your</p> <p>6 projection was off?</p> <p>7      A. I don't recall. I don't remember.</p> <p>8      Q. Do you have any recollection of him</p> <p>9 saying -- call on you and saying, How could you</p> <p>10 have given me that projection? It was way off?</p> <p>11     A. No, I don't recall that.</p> <p>12     Q. So is it your understanding that your</p> <p>13 projection was probably close to accurate?</p> <p>14     A. I don't recall. I don't know where</p> <p>15 the matched book ended up at the close of</p> <p>16 business that Friday.</p> <p>17     Q. Okay. And now, whatever it ends up on</p> <p>18 the close of business that Friday, it wouldn't</p> <p>19 change on Saturday or Sunday, correct?</p> <p>20     A. Correct.</p> <p>21     Q. So it would reopen the following</p> <p>22 Monday morning at the same level?</p> <p>23     A. But we never reopened, so ...</p> <p>24     Q. Okay. Had you --</p> <p>25     A. Had we reopened, yes.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2      Q. How do I find out what the matched</p> <p>3 book closed at that Friday?</p> <p>4      A. I don't know. I don't know.</p> <p>5      Q. Is there some kind of report that's</p> <p>6 generated on the weekend that showed what the</p> <p>7 matched book was that week?</p> <p>8      A. I don't know. You'd have to ask the</p> <p>9 financial people what, you know, documents they</p> <p>10 would -- they kept and preserved and what have</p> <p>11 you, what information they had.</p> <p>12     Q. And the financial, by "financial</p> <p>13 people," you mean who?</p> <p>14     A. Gerry Reilly's group, et cetera, and</p> <p>15 people that work for him, you know, would report</p> <p>16 the balance sheet for Fixed Income and for</p> <p>17 Capital Markets. So they would be the people</p> <p>18 that would have that information.</p> <p>19     Q. Okay. So when this sentence says,</p> <p>20 "Gerry" -- it's questioning Gerry about whether</p> <p>21 this has been reflected on the balance sheet,</p> <p>22 that -- is it reasonable to take that as meaning</p> <p>23 the balance sheet that his group prepares?</p> <p>24     A. I believe that Gerry prepares the</p> <p>25 balance sheet information, so I would think that</p>

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 this means, Gerry, please, see if your numbers  
3 and the numbers I anticipated to hit would check  
4 out.

5 Q. Okay. Then if we go up to the next  
6 e-mail in the chain, if you'll take a look,  
7 you'll see that it's talking about, "Practically  
8 the issue of what goes is complicated by the LBI  
9 cash position and who is going to fund the  
10 remaining assets. It is either the Fed, which  
11 they will not take, or Barclays."

12 Do you have any understanding of what  
13 that's referring to?

14 A. No, I don't.

15 Q. Do you have any understanding of  
16 whether the phrase "what goes" is talking about  
17 assets that would go to Barclays?

18 A. Could you ask that question again?  
19 I'm sorry.

20 Q. You see the use of the term "what  
21 goes"?

22 A. I don't know what that means.

23 Q. Okay. Is it possible that it's  
24 referring to what assets would go to Barclays?

25 A. I -- it could be possible. I don't

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 know.

3 Q. Okay.

4 A. I don't know what that -- how that's  
5 used in the context of that, but ...

6 Q. It continues, the e-mail continues,  
7 "So I think auction rates may be impossible to  
8 exclude."

9 Do you recall any discussions about  
10 excluding auction rates?

11 A. No, I do not.

12 Q. In any context?

13 A. No, I do not.

14 Q. Any understanding that auction rate  
15 securities were not going to be transferred to  
16 Barclays during that week?

17 A. No, I had no knowledge of what was  
18 going on with auction rates.

19 Q. Did you ever subsequently develop any  
20 knowledge about what was going on, what happened  
21 with auction rates?

22 A. There were a few auction rate  
23 securities that were transferred in the  
24 transaction. There were a few auction rate  
25 securities that were transferred. That I know.

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Q. Do you have any estimate of the amount  
3 of the value of those securities?

4 A. No, I do not.

5 Q. Previously you said that -- we talked  
6 about whether the matched book at close of  
7 business Friday is the same as the value the  
8 following Monday?

9 A. Uh-huh.

10 Q. And you said we didn't open Monday.

11 How did -- was the matched book  
12 transferred to Barclays ultimately?

13 A. My understanding was it did not get  
14 transferred.

15 Q. So what got transferred within the  
16 shop that you were working in?

17 A. The division I was in, I believe  
18 nothing got transferred.

19 Q. So your understanding is the --

20 A. I was not told to transfer anything.  
21 There was no protocol set up to do transfer, so  
22 I'm surmising that nothing was transferred. I  
23 certainly did not knowingly transfer assets to  
24 Barclays.

25 Q. Okay. And when you went to work for

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Barclays, were the same assets there that you  
3 had previously been working on in Lehman?

4 A. Not to my recollection, no.

5 Q. So what did you do at Barclays? Start  
6 a whole new book?

7 A. Barclays already had an existing  
8 business that was operating and trading. So  
9 they continued to operate and trade under their  
10 normal business structure and continued to do  
11 business at Barclays as an operating  
12 institution.

13 Q. So you, in your current capacity at  
14 Barclays, is it your belief that you're working  
15 with a completely new book of business than what  
16 you were working at when you were at Lehman?

17 A. Actually, I was not -- on day one, it  
18 wasn't agreed or who was going to be responsible  
19 for what going forward.

20 Q. Uh-huh.

21 A. So I actually had very little standing  
22 at Barclays, so I wasn't really operating the  
23 business. I was helping in transition, people,  
24 things like that, discussing technology  
25 transitions, but in terms of operating the

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       business, I had no authority to do so.</p> <p>3       Q.   I thought earlier you said your</p> <p>4       responsibilities are essentially the same at</p> <p>5       Barclays?</p> <p>6       A.   It took time to get to that. It took</p> <p>7       several weeks for those decisions to be made.</p> <p>8       Q.   And now do you have an understanding</p> <p>9       of whether your Lehman book of business stayed</p> <p>10      with Lehman?</p> <p>11      A.   I believe that the Lehman book of</p> <p>12      business, based on what I know, stayed at</p> <p>13      Lehman.</p> <p>14      Q.   Okay. And when you say that, you're</p> <p>15      talking about the book of business within your</p> <p>16      financing --</p> <p>17      A.   Correct.</p> <p>18      Q.   -- business at Lehman?</p> <p>19      A.   Correct.</p> <p>20      Q.   Okay.</p> <p>21      (Exhibit 127, an e-mail stream, the</p> <p>22      first one in time dated September 18, 2008,</p> <p>23      at 6:04 A.M., marked for identification, as</p> <p>24      of this date.)</p> <p>25      Q.   Mr. Coghlan, I'm handing you a</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       document marked as Exhibit 127, which again</p> <p>3       appears to be a different continuation from the</p> <p>4       e-mail we've been discussing for a while here,</p> <p>5       so I direct your attention if you want to take</p> <p>6       some time to read the upper portion, which</p> <p>7       appears to be a new portion.</p> <p>8       (Document review.)</p> <p>9       A.   I've read the document.</p> <p>10      Q.   Okay. I understand you're not copied</p> <p>11      on the newer portion of these e-mails, but I was</p> <p>12      wondering if they remind you or suggest anything</p> <p>13      to you about what was being discussed at this</p> <p>14      time?</p> <p>15      A.   No, I have not seen this e-mail and I</p> <p>16      don't know what would be being discussed other</p> <p>17      than what the letter says, which is open issues.</p> <p>18      I don't know.</p> <p>19      Q.   You see the reference to a meeting --</p> <p>20      "Please set up a meeting" -- or it says, "Gerry,</p> <p>21      please set up a meeting first thing this morning</p> <p>22      to work through these issues with Mike, Eric and</p> <p>23      Hyung."</p> <p>24      Do you recall any such meeting that</p> <p>25      morning?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A.   No, I do not.</p> <p>3       Q.   Can you speculate on what they might</p> <p>4       have been meeting about?</p> <p>5       A.   No. I mean, they were meeting</p> <p>6       relative to open issues on the deal. What those</p> <p>7       issues were I do not know.</p> <p>8       Q.   Do you know if that meeting had to do</p> <p>9       with issue number 3 at the bottom?</p> <p>10      A.   I do not know if that had to be part</p> <p>11      of that.</p> <p>12      Q.   At the very top it says, "Barclays</p> <p>13      guys chose the assets. We did not have anything</p> <p>14      to do with it."</p> <p>15      Do you know what that's referring to</p> <p>16      at all?</p> <p>17      A.   No.</p> <p>18      Q.   Do you know who chose the assets that</p> <p>19      ultimately got transferred to Barclays?</p> <p>20      A.   No, I do not.</p> <p>21      Q.   Do you know if Barclays did versus</p> <p>22      Lehman?</p> <p>23      A.   I do not know.</p> <p>24      Q.   Did you have any involvement in what</p> <p>25      assets ultimately got transferred to Barclays?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       A.   To the best of my knowledge, no.</p> <p>3       Q.   Did you have any discussions along the</p> <p>4       lines of who chose the particular assets that</p> <p>5       went to Barclays?</p> <p>6       A.   No, I did not hear those discussions.</p> <p>7       Q.   Since moving to Barclays, have you</p> <p>8       learned anything that would suggest who chose</p> <p>9       the assets that Barclays ultimately acquired?</p> <p>10      A.   No, I do not know who chose the</p> <p>11      assets.</p> <p>12      Q.   You haven't heard anything since</p> <p>13      you've been at Barclays about that?</p> <p>14      A.   No, I have not heard.</p> <p>15      Q.   Have you heard anything since you've</p> <p>16      been at Barclays about how the assets were</p> <p>17      transferred to Barclays?</p> <p>18      A.   No, I have not heard about the asset</p> <p>19      transfer, no.</p> <p>20      Q.   Since you've been at Barclays, have</p> <p>21      you heard anything about the terms of the</p> <p>22      transaction between Lehman and Barclays?</p> <p>23      A.   No. No. I mean, the things I knew</p> <p>24      about the terms were that they bought the</p> <p>25      building. I know that. And away from that, I</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       wasn't really sure how the asset transfer or</p> <p>3       asset sale or whatever legal definition</p> <p>4       surrounded the deal would happen beyond that,</p> <p>5       but I did know the building was bought.</p> <p>6       Q.   Since you've been at Barclays, have</p> <p>7       you develop an understanding about what assets</p> <p>8       Barclays now has that previously were at Lehman?</p> <p>9       A.   No, I do not know.</p> <p>10      Q.   Since you've been at Barclays have you</p> <p>11      developed an understanding of what assets</p> <p>12      Barclays thinks it's still owed from Lehman?</p> <p>13      A.   No, I do not know.</p> <p>14      Q.   Have you ever heard any discussion</p> <p>15      about what Barclays thinks it's still owed from</p> <p>16      Lehman?</p> <p>17      A.   No, I have not heard anything like</p> <p>18      that.</p> <p>19      Q.   Okay. Mr. Coghlan, I'm handing you a</p> <p>20      copy of a document that's previously been marked</p> <p>21      as Exhibit 66B. It's an e-mail stream dated</p> <p>22      Friday, the 19th, September 19th, and you'll see</p> <p>23      your name towards the top of the e-mail as a</p> <p>24      recipient.</p> <p>25      Do you see your name?</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A.   I see my name. December 19 at 12:51.</p> <p>3       Q.   Correct. Could you please take a</p> <p>4       moment to review this document?</p> <p>5       (Document review.)</p> <p>6       A.   Okay.</p> <p>7       Q.   Do you see the phrase in the -- toward</p> <p>8       the bottom half of the page where Mr. Aronow</p> <p>9       writes, "Barclays operations team has</p> <p>10      recalculated the value of the collateral that</p> <p>11      they received from us last night and they are</p> <p>12      more than fully collateralized, including the</p> <p>13      haircuts applied." Do you see that?</p> <p>14      A.   Yes.</p> <p>15      Q.   Do you have any understanding of what</p> <p>16      that's referring to?</p> <p>17      A.   I'm sorry, could you ask the question</p> <p>18      again?</p> <p>19      Q.   Do you have any understanding what</p> <p>20      that sentence is referring to?</p> <p>21      A.   Not specifically, no.</p> <p>22      Q.   How about generally?</p> <p>23      A.   No. No. No. Again, no, I don't --</p> <p>24      it may be referring to this BoNY transfer, but I</p> <p>25      don't know that for sure.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q.   When you say "the BoNY transfer," what</p> <p>3       are you talking about?</p> <p>4       A.   There was a period of time during the</p> <p>5       week where we moved assets out of the Fed</p> <p>6       account and forwarded to BoNY, which was</p> <p>7       Barclays' clearing agent, and this may be</p> <p>8       referring to that transfer.</p> <p>9       Q.   Okay. Is that the transaction we</p> <p>10      discussed earlier this morning?</p> <p>11      A.   I believe so, yes. It may be the</p> <p>12      transfer.</p> <p>13      Q.   Is it your understanding that that was</p> <p>14      not a tri-party repo arrangement?</p> <p>15      A.   As I said --</p> <p>16      MR. STERN: Objection to the form.</p> <p>17      A.   As I said, I don't know what form of</p> <p>18      transfer took place. The only thing that I was</p> <p>19      aware of the people on my team were working on</p> <p>20      was helping the Treasury Department, you know,</p> <p>21      settle the trade. So whether it was done in</p> <p>22      tri-party, bilaterally, or some other</p> <p>23      documentation, I just don't know what the</p> <p>24      relationship between the parties were.</p> <p>25      Q.   Well, if it was not a tri-party, would</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Barclays' operations team have had any interest</p> <p>3       in what the collateral that was transferred?</p> <p>4       MR. STERN: Objection to the form.</p> <p>5       A.   That I wouldn't know. I mean, I</p> <p>6       wasn't even a member of BarCap at the time, so I</p> <p>7       wouldn't even -- I wouldn't know what their</p> <p>8       collateral requirements were or weren't.</p> <p>9       Q.   Well, do you have any understanding at</p> <p>10      all, whether during the week of September 19 --</p> <p>11      September 15th or that you've developed later,</p> <p>12      as to Repurchase Agreements involving BarCap,</p> <p>13      Barclays Capital, and Lehman?</p> <p>14      MR. STERN: Objection to the form.</p> <p>15      A.   Can you rephrase?</p> <p>16      Q.   Do you know of any repurchase repo</p> <p>17      arrangements between Barclays and Lehman during</p> <p>18      this period of time?</p> <p>19      A.   No, I didn't know how this -- what was</p> <p>20      going on between Barclays and Lehman and how --</p> <p>21      what was happening with the transfer of assets</p> <p>22      other than, as I said, helping people settle</p> <p>23      whatever was agreed to. So I didn't -- again, I</p> <p>24      don't know if it was done in repo or tri-party</p> <p>25      or whatever form, you know, sale, I just don't</p>

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 know.

3 Q. Do you have any understanding of any  
4 financing arrangements between Barclays and  
5 Lehman during this period of time?

6 A. Well, I don't have any understanding  
7 of the financing relationship between the  
8 parties. I was -- people that worked for me  
9 helped settle whatever financing arrangement, if  
10 any, was negotiated between the parties.

11 Q. When you say "settle," that entails  
12 the transfer of some securities?

13 A. Collateral, yeah, collateral and  
14 getting collateral available to settle the  
15 trade.

16 Q. Have you ever heard of anything called  
17 the replacement transaction?

18 A. No, I have not.

19 Q. Have you ever heard of anything called  
20 the September 18 Repurchase Agreement?

21 A. No, I have not.

22 Q. Do you know of any transaction  
23 involving Barclays that took place on September  
24 18, which is the Thursday of that week?

25 A. No, I do not.

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1 HIGHLY CONFIDENTIAL - J. COGHLAN

2 Q. Do you know why Mr. Aronow would be  
3 copying you on this e-mail?

4 A. No, I do not. I don't know.

5 Q. What is Mr. Aronow's position?

6 A. David was in Customer Service in the  
7 Prime Broker, but David's background was a heavy  
8 operations background and settlement background,  
9 so he may have been asked to help out given his  
10 knowledge and experience.

11 Q. Was David part of your team?

12 A. No, he does not report to me.

13 Q. He's a separate report to Mr. --

14 A. He did not report directly to John  
15 Wickham, but indirectly he reported to John.

16 Q. You see on the following line of this  
17 e-mail it says, "Senior management at Barclays I  
18 am told are very satisfied with the results of  
19 the effort."

20 Do you have any knowledge about senior  
21 management at Barclays satisfaction with respect  
22 to anything during that week?

23 A. No, I don't know what the management  
24 was thinking or opining.

25 (Exhibit 128, an e-mail stream, the

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 first in time dated September 19, 2008, at  
3 2:44 P.M., marked for identification, as of  
4 this date.)

5 Q. Mr. Coghlan, I'm handing you a copy of  
6 Exhibit 128, which appears to be an e-mail with  
7 multiple recipients dated September 19 at 10  
8 P.M. If you look through the list of  
9 recipients, your name is in the top third of the  
10 page, I believe. Do you see it?

11 A. I see that, yes.

12 Q. My first question is, do you recall  
13 seeing this e-mail before?

14 A. I don't recall seeing this specific  
15 e-mail.

16 Q. Do you have an understanding of why  
17 you were included in this lengthy list of  
18 recipients here?

19 A. Yes. ESEP was an old Lehman Brothers  
20 deferred compensation program, and I was a  
21 participant in that as an employee of Lehman  
22 Brothers.

23 Q. Okay.

24 A. So I was a participant in that  
25 program.

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1 HIGHLY CONFIDENTIAL - J. COGHLAN

2 Q. And who was Craig Schiffer?

3 A. Craig Schiffer is a former Lehman  
4 employee, and I'm not sure exactly what his role  
5 in all this was.

6 Q. Do you have any understanding why he's  
7 sending this large group of people an e-mail  
8 that Friday night?

9 A. Yes. There is some, in this program,  
10 there's some sort of credit exposure to Lehman  
11 Brothers. So, to get your benefit, it's  
12 somehow, and I don't know the structure  
13 specifically, somehow you have credit exposure  
14 to Lehman Brothers.

15 When the LBI filed, the value of this  
16 benefit diminished, potentially significantly,  
17 depending on what the recovery rate on the debt  
18 is. So there is a Working Committee formed to  
19 try to figure out where the ESEP program fits  
20 into the bankruptcy proceedings, and Craig was  
21 one of the first people to get involved.

22 Q. Okay. So am I correct to say that  
23 this is just a report to your group about what  
24 took place at the court hearing on Friday?

25 A. I don't know what this document

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<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 specifically says. I haven't had a chance to 3 read it. 4 Q. Well, take -- 5 MR. STERN: Why don't you read the 6 whole thing. 7 Q. Take your chance to review it. 8 (Document review.) 9 A. Okay. 10 Q. So does it appear to you to be a 11 report of what took place at the court that 12 Friday night? 13 A. Yes, it appears that certain 14 participants in the ESEP program attended the 15 bankruptcy hearing and are reporting back the 16 information they learned at the bankruptcy 17 hearing. 18 Q. This was sent at 10 P.M. on Friday 19 night. 20 Are you already in Philadelphia by 21 then? 22 A. I believe so, yes. 23 Q. Any reason you went to Philadelphia 24 that weekend? 25 A. I had a family affair, yes.</p>	<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 Q. It wasn't to seek employment 3 elsewhere? 4 A. No. 5 Q. Okay. My question has to do with the 6 third entry in this report, where it says, "The 7 assets of the deal dropped from 70 billion to 47 8 billion, mostly due to dealers not returning the 9 repos." Do you see that? 10 A. Yes. 11 Q. Do you have any understanding about 12 whether the assets of the deal in fact dropped 13 from 70 billion to 47 billion? 14 A. I do not. 15 Q. Do you have any understanding of 16 whether there was a problem associated with 17 dealers not returning repos? 18 A. I -- there were certain dealers that 19 were not returning repos. How it affected the 20 outcome of the deal I don't know. 21 Q. What does "not returning repos" mean? 22 A. They didn't want to give us back 23 collateral and get cash because they were afraid 24 that they would not get the cash back. So they 25 just took the collateral and put us in default.</p>
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<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 Q. Okay. So it's not renewing repos, 3 it's -- 4 A. It's just, I'll keep what I have and, 5 you know, and I'm not giving it back to you, 6 because if I give it back to you, you may have 7 my cash and my collateral. 8 Q. Okay. So was that a problem at this 9 period of time, do you think? 10 A. I know that it was occurring. How 11 much of that in terms of volume I don't know. 12 Q. Okay. It says further in that entry, 13 "Barclays is assuming 45 billion of 14 liabilities." 15 Do you have any knowledge about the 16 amount of liabilities Barclays was assuming? 17 A. No. 18 Q. Fair to say that this -- the level of 19 assets and liabilities in the Barclays/Lehman 20 deal is not something that you were working on 21 at the time? 22 A. Can you say the question again? 23 Q. Is it fair to say that you, at the 24 time, you didn't have any knowledge of the level 25 of assets and liabilities that were being</p>	<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 transferred between Barclays and Lehman? 3 A. I had no knowledge of that, no, sir. 4 Q. Did you later obtain any knowledge 5 after you moved to Barclays about that? 6 A. No, I did not. 7 Q. Do you have any understanding as you 8 sit here today about how many assets were 9 transferred to Barclays? 10 A. I can't recall, no. 11 Q. Do you have any understanding as you 12 sit here today about how many liabilities were 13 transferred to Barclays? 14 A. No, I do not. 15 Q. Do you have any understanding of how 16 Barclays was able to declare a gain on 17 acquisition of some \$4 billion shortly after 18 acquiring Lehman assets? 19 A. Say the question again. 20 Q. Do you have any understanding as we 21 sit here today how Barclays was able to declare 22 a \$4 billion gain on this acquisition? 23 A. No, I do not know. 24 Q. Do you have any -- in the context of 25 your work for Barclays, have you ever had any</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       dealings with the calculation of a gain on the</p> <p>3       acquisition?</p> <p>4       A.   No, I have not.</p> <p>5       Q.   Have you ever had any discussions with</p> <p>6       anyone about input that would go into the</p> <p>7       calculation of a gain on acquisition?</p> <p>8       A.   Not that I know of, no.</p> <p>9       Q.   Do you know who at Barclays would work</p> <p>10      on that calculation?</p> <p>11      A.   I do not know.</p> <p>12      Q.   Is it fair to say you've never had</p> <p>13      conversations with people where they asked you</p> <p>14      for some input with respect to what was going to</p> <p>15      go into the Barclays balance sheet after the</p> <p>16      acquisition?</p> <p>17      A.   I'm sorry, I don't understand the</p> <p>18      question. Would you ask that again, please?</p> <p>19      Q.   Is it fair to say that you have not</p> <p>20      had any conversations with anyone where they</p> <p>21      asked you for input into any calculations that</p> <p>22      were going to go into the Barclays balance sheet</p> <p>23      after the acquisition?</p> <p>24      A.   To the best of my knowledge, that's</p> <p>25      true, yes. Best of my knowledge, I have not had</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       conversations about what was going into the</p> <p>3       balance sheet after the acquisition.</p> <p>4       Q.   Fair enough.</p> <p>5       (Exhibit 129, an e-mail stream, the</p> <p>6       first one in time dated September 19, 2008,</p> <p>7       at 2:26 P.M., marked for identification, as</p> <p>8       of this date.)</p> <p>9       Q.   Mr. Coghlan, I'm handing you a copy of</p> <p>10      an exhibit marked 129, which is an e-mail stream</p> <p>11      dated September 19 between Mr. Aronow, Mr.</p> <p>12      Hraska and some others.</p> <p>13      As far as I can tell, you're not a</p> <p>14      participant in the e-mail stream, but if you</p> <p>15      look towards the upper middle part of the page,</p> <p>16      Mr. Aronow is saying, "I will be with Coghlan</p> <p>17      from 3:30 to 5." Do you see that?</p> <p>18      MR. STERN: Why don't you take the</p> <p>19      time to read the document.</p> <p>20      (Document review.)</p> <p>21      A.   Okay.</p> <p>22      Q.   Do you see the reference to a meeting</p> <p>23      between -- or, Mr. Aronow being with you from</p> <p>24      3:30 to 5 o'clock?</p> <p>25      A.   Yes.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q.   Do you recall having a meeting with</p> <p>3       Mr. Aronow at that time?</p> <p>4       A.   No, I don't recall.</p> <p>5       Q.   Do you recall having a meeting with</p> <p>6       Mr. Aronow at any time during this week?</p> <p>7       A.   I don't recall having a meeting with</p> <p>8       him, no.</p> <p>9       Q.   Do you recall any discussions you</p> <p>10      might have had with Mr. Aronow during that week?</p> <p>11      MR. STERN: I'm sorry, Bill, are you</p> <p>12      referring to a meeting with Aronow? Maybe</p> <p>13      I'm confused about this e-mail message.</p> <p>14      MR. HINE: I think you're right. I</p> <p>15      think I misspoke.</p> <p>16      Q.   Let's start again. Mr. Coghlan, you</p> <p>17      see the reference -- apparently it's an e-mail</p> <p>18      from Jim Hraska to Mr. Aronow where he mentioned</p> <p>19      that he will be with Coghlan from 3:30 to 5, do</p> <p>20      you see that?</p> <p>21      A.   Yes.</p> <p>22      Q.   So do you recall having any kind of</p> <p>23      meetings with Mr. Hraska at that time?</p> <p>24      A.   No, I do not recall.</p> <p>25      Q.   Do you recall any meetings with Mr.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Hraska during that week of September 15?</p> <p>3       A.   No, I don't recall any meetings with</p> <p>4       Jim.</p> <p>5       Q.   Do you have any recollection of any</p> <p>6       conversations you might have had with Mr. Hraska</p> <p>7       during that week?</p> <p>8       A.   No, I don't recall any specific</p> <p>9       conversations.</p> <p>10      Q.   Do you recall generally whether you</p> <p>11      had any conversations with Mr. Hraska?</p> <p>12      A.   No, I don't recall having</p> <p>13      conversations with Jim.</p> <p>14      Q.   If you look further down into the</p> <p>15      e-mail chain, you will see a reference to --</p> <p>16      looks like an e-mail from Mr. Palchynsky where</p> <p>17      he says, toward the bottom, "Chase has agreed to</p> <p>18      replace last night's unauthorized \$15.8 billion</p> <p>19      Barclays tri-party trade with a JPChase bank</p> <p>20      loan." Do you see that?</p> <p>21      A.   Yes.</p> <p>22      Q.   Do you have any understanding of what</p> <p>23      those transactions are?</p> <p>24      A.   I don't know.</p> <p>25      Q.   Do you have any understanding of any</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2   kind of Barclays tri-party trade during this</p> <p>3   week?</p> <p>4       A.   No, I was not aware of any tri-party</p> <p>5   trade with Barclays.</p> <p>6       Q.   So if there was such a trade, it's not</p> <p>7   something that you were working on during that</p> <p>8   week?</p> <p>9       A.   No, the one trade I was aware of is</p> <p>10   that we were moving collateral from the Fed to</p> <p>11   BoNY. Again, the legal relationship and how</p> <p>12   that was structured, I was just working on the</p> <p>13   settlement side with a bunch of other settlement</p> <p>14   people.</p> <p>15       Q.   Okay.</p> <p>16       A.   I was aware of that, but I was not --</p> <p>17   I didn't know it was tri-party, I don't know</p> <p>18   15.8, I don't know what date, et cetera.</p> <p>19       Q.   Are you aware of any Chase bank loan</p> <p>20   that was effected during that week?</p> <p>21       A.   No, I was not aware of it.</p> <p>22       Q.   Is that something you would normally</p> <p>23   work on, or is that handled by a different</p> <p>24   party.</p> <p>25       A.   That would normally be handled by cash</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2   management and Paolo, Dan Fleming and Paolo</p> <p>3   Tonucci.</p> <p>4       Q.   Fair enough.</p> <p>5       (Exhibit 130, an e-mail dated</p> <p>6   September 19, 2008, at 3:22 P.M., marked for</p> <p>7   identification, as of this date.)</p> <p>8       Q.   Mr. Coghlan, I'm handing you a copy of</p> <p>9   an exhibit marked 130, which is an e-mail stream</p> <p>10   dated September 19, in which you are a</p> <p>11   recipient. Take a minute just to look at that</p> <p>12   e-mail.</p> <p>13       A.   Okay.</p> <p>14       (Document review.)</p> <p>15       A.   Okay.</p> <p>16       Q.   Do you see the reference in the middle</p> <p>17   of the page to a statement that says, "Our LBI</p> <p>18   positions are not moving today. The intent is</p> <p>19   for us to start business from scratch as</p> <p>20   Barclays on Monday morning." Do you see that?</p> <p>21       A.   Yes, I do.</p> <p>22       Q.   Do you have any recollection or</p> <p>23   understanding of what that's referring to?</p> <p>24       A.   No, I -- no, I -- I'm not sure what</p> <p>25   that -- what that means. I don't recall.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q.   Do you have any guess about what it</p> <p>3   means?</p> <p>4       A.   Well, it's consistent with what I</p> <p>5   understood that the matched book -- the</p> <p>6   financing books were not moving. So to the</p> <p>7   extent that LBI positions are not moving and</p> <p>8   that we were going to start from scratch as</p> <p>9   Barclays on Monday would be consistent with the</p> <p>10   understanding that I had, and whether this is</p> <p>11   referencing that I'm not a hundred percent sure.</p> <p>12       Q.   Where it says -- well, who is Carlos</p> <p>13   Recalde?</p> <p>14       A.   He was an Operations person.</p> <p>15       Q.   He doesn't work in your department?</p> <p>16       A.   He doesn't work in my department. He</p> <p>17   did work in Prime Brokerage and reported to --</p> <p>18   in to John Wickham, again, indirectly through</p> <p>19   layers of management, but was not part of my</p> <p>20   reporting line.</p> <p>21       Q.   Where it says, "Our LBI positions are</p> <p>22   not moving today," does that suggest that they</p> <p>23   moved some other day?</p> <p>24       A.   No, I don't -- no, I wouldn't -- I</p> <p>25   don't think that's what that means.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGLAN</p> <p>2       Q.   What positions do you think he's</p> <p>3   referring to?</p> <p>4       A.   The -- I think he's referring to</p> <p>5   financing positions in the either equity finance</p> <p>6   or fixed income repo.</p> <p>7       Q.   So the positions that you would manage</p> <p>8   in your book?</p> <p>9       A.   Yes.</p> <p>10       Q.   If you would read down towards the</p> <p>11   bottom, it says, "We may still need the service</p> <p>12   LBI assets on Monday. This part is still in</p> <p>13   flux." You see that?</p> <p>14       A.   Yes.</p> <p>15       Q.   Do you have any understanding of what</p> <p>16   that could mean?</p> <p>17       A.   No, I do not.</p> <p>18       Q.   If you moved your operations to</p> <p>19   Barclays on Monday and started anew, would there</p> <p>20   be any need to service assets that had been left</p> <p>21   back at LBI?</p> <p>22       A.   We may have had to support SIPC. I</p> <p>23   don't know. That's not my area of expertise.</p> <p>24   But there may have been people dedicated to</p> <p>25   support the SIPC positions that were being made.</p>



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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Q. Your crew was not involved in that?  
3 A. Not to my knowledge, no.  
4 (Exhibit 131, an e-mail stream, the  
5 first one in time dated September 19, 2008,  
6 at 11:03 A.M., marked for identification, as  
7 of this date.)  
8 Q. Mr. Coghlan, I'm handing you a copy of  
9 an exhibit marked 131, another e-mail stream  
10 dated on the 19th of September.  
11 After you've had a chance to look at  
12 it, I'm going to ask you if you have any  
13 recollection about the topic.  
14 A. No.  
15 Q. "No," meaning no recollection?  
16 A. No recollection about --  
17 MR. STERN: Have you read the whole  
18 thing?  
19 THE WITNESS: I didn't see the part up  
20 there.  
21 MR. STERN: Read from the bottom up.  
22 Usually that's the way these go.  
23 Q. Mr. Coghlan, have you had a chance to  
24 look at the document?  
25 A. I have.

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Q. Do you recall any other further  
3 discussions about that issue?  
4 A. I'm sorry?  
5 Q. Do you recall any other discussions  
6 you might have had about that issue?  
7 A. No, you know, we just wanted to make  
8 sure that FICC was going to continue to clear  
9 trades because we needed them to do that to be  
10 able to shrink, you know, get the matched book  
11 to be smaller.  
12 Q. Okay.  
13 (Exhibit 132, an e-mail stream, the  
14 first one in time dated September 20, 2008,  
15 at 5:43, marked for identification, as of  
16 this date.)  
17 Q. Mr. Coghlan, I'm handing you a  
18 document marked as Exhibit 132, which is an  
19 e-mail stream from Sunday, September 21, in  
20 which you are a CC recipient. If you would take  
21 a minute just to review this.  
22 (Document review.)  
23 A. Uh-huh. I've reviewed this document.  
24 Q. Do you have any recollection of what's  
25 being discussed in this e-mail stream?

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 Q. Do you have any recollection about  
3 what was being discussed in this e-mail stream?  
4 A. I don't remember this e-mail  
5 specifically.  
6 Q. Do you have any recollection about  
7 what was being discussed in this e-mail stream?  
8 A. I don't remember this e-mail  
9 specifically. There was discussion about  
10 whether FICC was going to continue to clear  
11 trades.  
12 Q. What is FICC?  
13 A. It's an interdealer clearing and  
14 settlement engine and, you know, we wanted them  
15 to continue to clear trades for us so we could  
16 continue to wind-down positions. And so I do  
17 remember having -- getting posted, you know, is  
18 FICC still clearing for us.  
19 Q. And were they?  
20 A. I believe at the open of business  
21 on -- they cleared up through the opening of  
22 business on Friday.  
23 Q. And at some point did they stop  
24 clearing?  
25 A. I don't recall. I don't recall.

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 A. No, I do not.  
3 Q. Do you have any understanding of, when  
4 it's talking about segregated funds, and  
5 specifically I'm looking at the bottom of the  
6 second page where it says, "We are obligated by  
7 CFTC regs to return 100 percent of segregated  
8 funds to our futures customers." Do you see  
9 that?  
10 A. Yes.  
11 Q. Any understanding what is being  
12 discussed there?  
13 A. It has to do with, I believe, the  
14 rules of the Futures Trading Commission relative  
15 to the segregation of funds, customer funds, and  
16 what behavior is required under the rules of the  
17 exchange.  
18 Q. Do you have any recollection of  
19 discussions during this period about that issue?  
20 A. No, that's not my -- this was in Prime  
21 Services, but it was part of the futures  
22 business. It was run by Jeff Jennings.  
23 Q. Why would you be CC'd on this?  
24 A. I don't know. I don't know.  
25 Q. Further up in that e-mail chain, the

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   next e-mail says, "In part, the only alternative</p> <p>3   would be to repo the assets to Barclays if they</p> <p>4   were amenable." Do you see that?</p> <p>5       A. Yes.</p> <p>6       Q. Do you recall any discussions about</p> <p>7   repoing assets to Barclays during this period?</p> <p>8       A. No, I do not.</p> <p>9       Q. We're done with the e-mails, but I do</p> <p>10   have a couple more questions. I'll try to make</p> <p>11   it as quick as possible.</p> <p>12       Mr. Coghlan, I'm handing you a copy of</p> <p>13   a document marked -- previously marked as</p> <p>14   Exhibit 25, which is a letter dated as of</p> <p>15   September 20, 2008, and after you've had a</p> <p>16   chance to look at it, my first question is did</p> <p>17   you ever see this document before.</p> <p>18       (Document review.)</p> <p>19       A. I have never seen this document</p> <p>20   before.</p> <p>21       Q. Okay. If you look on the first page,</p> <p>22   you'll see at the bottom there's a clause two</p> <p>23   little ii?</p> <p>24       A. Uh-huh.</p> <p>25       Q. And it mentions in it Schedule A and</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   then you'll see later it mentions a Schedule B.</p> <p>3       Do you see that?</p> <p>4       A. Okay, yeah.</p> <p>5       Q. Do you have any understanding of what</p> <p>6   Schedule A and Schedule B is in connection with</p> <p>7   the Barclays/Lehman transaction?</p> <p>8       A. I do not.</p> <p>9       Q. Have you ever heard those terms</p> <p>10   before?</p> <p>11       A. In terms of the Barclays transaction,</p> <p>12   I've never heard those terms before.</p> <p>13       Q. You meant the Barclays/Lehman --</p> <p>14       A. I mentioned to you earlier, in the</p> <p>15   tri-party, they have a Schedule A in the</p> <p>16   tri-party. I've heard of that --</p> <p>17       Q. Okay.</p> <p>18       A. -- in the context of tri-party. In</p> <p>19   terms of -- I've never heard the phrase</p> <p>20   "Schedule B," but in terms of the transaction</p> <p>21   between Lehman and Barclays, I've never heard</p> <p>22   the phrase "Schedule A" and "Schedule B."</p> <p>23       Q. Have you ever heard of the phrase</p> <p>24   "clarification letter" with respect to the</p> <p>25   Barclays/Lehman transaction?</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A. No, I have not.</p> <p>3       Q. When you read about Schedule A, it</p> <p>4   talks about -- and I'm reading at the bottom of</p> <p>5   page 1 -- "Securities owned by LBI and</p> <p>6   transferred to purchaser, or its affiliates,</p> <p>7   under the Barclays Repurchase Agreement."</p> <p>8       Have you ever seen anything that</p> <p>9   reflected a schedule of securities that were</p> <p>10   going to be transferred to Barclays?</p> <p>11       A. Have I ever seen a schedule of</p> <p>12   securities? I don't believe so, no.</p> <p>13       Q. Have you ever -- have any of your</p> <p>14   people in your segment of Lehman, were any of</p> <p>15   them involved in preparing a schedule of</p> <p>16   securities that were to be transferred to</p> <p>17   Barclays?</p> <p>18       A. As I said, you know, some of the</p> <p>19   people that work for me helped settling.</p> <p>20       Q. Right.</p> <p>21       A. So they might have some knowledge of</p> <p>22   the securities that were going, but I did not</p> <p>23   directly have any knowledge and I can't opine</p> <p>24   whether they did have firsthand knowledge.</p> <p>25       Q. Okay. Fair to say that if any of your</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   people did have knowledge of such a schedule,</p> <p>3   you were not involved in supervising their</p> <p>4   efforts?</p> <p>5       A. That's correct.</p> <p>6       Q. Okay. Were any of your -- okay.</p> <p>7   Scratch that. Do you know which entity within</p> <p>8   Lehman was responsible for preparing schedules</p> <p>9   of securities that were going to be transferred</p> <p>10   to Barclays?</p> <p>11       A. I do not know who did that, no.</p> <p>12       Q. If you could turn to page 5 of this</p> <p>13   agreement. Would you look at paragraph 13. It</p> <p>14   refers to a September 18, 2008 repurchase</p> <p>15   arrangement among the purchaser and/or its</p> <p>16   affiliates and LBI and/or its affiliates and</p> <p>17   Bank of New York, as collateral agent.</p> <p>18       MR. STERN: I think if you're going to</p> <p>19   ask about this, he should have a chance to</p> <p>20   read the whole paragraph.</p> <p>21       MR. HINE: He can.</p> <p>22       MR. STERN: Why don't you take your</p> <p>23   time.</p> <p>24       MR. HINE: But I just want to direct</p> <p>25   his attention to that definition of what's</p>

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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       termed the "Barclays Repurchase Agreement."</p> <p>3       Q. Do you see that, Mr. Coghlan?</p> <p>4       A. I see that, yes. In parentheses,</p> <p>5       correct?</p> <p>6       Q. Yes. Take your time to read that</p> <p>7       paragraph.</p> <p>8       (Document review.)</p> <p>9       A. Okay.</p> <p>10      Q. Do you have any understanding of what</p> <p>11      the Barclays Repurchase Agreement is?</p> <p>12      A. No, I've never heard -- no, I do not</p> <p>13      know.</p> <p>14      Q. I think we've danced around this issue</p> <p>15      today. I just want to make sure that we're on</p> <p>16      the same page here.</p> <p>17      You had previously talked about</p> <p>18      transferring assets, being involved in</p> <p>19      transferring assets to Bank of New York,</p> <p>20      correct?</p> <p>21      A. Yes.</p> <p>22      Q. Did you have any understanding of</p> <p>23      whether that transfer had to do with a Barclays</p> <p>24      Repurchase Agreement, as described here?</p> <p>25      A. No, I had no knowledge of a Barclays</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Repurchase Agreement existing or what its terms</p> <p>3       and conditions would be.</p> <p>4       Q. Okay. So you don't know one way or</p> <p>5       another whether that transfer that you were</p> <p>6       doing towards Bank of New York was in connection</p> <p>7       with that agreement or not; is that right?</p> <p>8       A. Correct.</p> <p>9       Q. Am I correct to say all you were --</p> <p>10      you were involved in the actual settling and</p> <p>11      transferring of those assets, of those</p> <p>12      securities, not in the agreement itself?</p> <p>13      A. Correct.</p> <p>14      Q. Okay. If you read further down in</p> <p>15      that paragraph, you see reference to a Notice of</p> <p>16      Termination relating to the Barclays Repurchase</p> <p>17      Agreement, you see that? Last sentence of that</p> <p>18      paragraph?</p> <p>19      A. "Additionally notice" -- okay.</p> <p>20      Q. Do you have any understanding of</p> <p>21      whether Notice of Termination was ever sent out</p> <p>22      during this week?</p> <p>23      A. I have -- I have no knowledge of that.</p> <p>24      I have no knowledge of what the terms and</p> <p>25      conditions of that.</p>
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<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       Q. Okay. As a general matter, what's a</p> <p>3       Notice of Termination with respect to a repo?</p> <p>4       A. I don't -- I don't know what that term</p> <p>5       means per se. I don't know. I don't know what</p> <p>6       a Notice of Termination would be.</p> <p>7       Q. Okay. Have you ever, in your</p> <p>8       experience with repos, have you ever come across</p> <p>9       a Notice of Termination at all?</p> <p>10      A. No, I've never --</p> <p>11      Q. Fair enough.</p> <p>12      MR. STERN: I'm sorry, did you</p> <p>13      complete your answer?</p> <p>14      A. I said I have never, to my</p> <p>15      recollection, I have never been involved with a</p> <p>16      Notice of Termination.</p> <p>17      Q. Mr. Coghlan, I have a -- oh, I'm</p> <p>18      sorry, I have one more document I need to show</p> <p>19      you before I get to my last --</p> <p>20      (Exhibit 133, a document bearing Bates</p> <p>21      Nos. BCI-EX-00079850 and 79849, marked for</p> <p>22      identification, as of this date.)</p> <p>23      Q. Mr. Coghlan, I handed you a copy of an</p> <p>24      exhibit marked 133, and I just have a brief</p> <p>25      question about that.</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       (Document review.)</p> <p>3       Q. Mr. Coghlan, have you had a chance to</p> <p>4       look at the document?</p> <p>5       A. I have.</p> <p>6       Q. My question relates to the chart</p> <p>7       that's on the second page. Previously we had</p> <p>8       discussed haircuts for the Fed repo, and my</p> <p>9       question is, have you ever seen a chart like</p> <p>10      this during your days at Lehman?</p> <p>11      A. No, I have not.</p> <p>12      Q. Does this look like the form of a</p> <p>13      chart that may have been prepared by your</p> <p>14      department?</p> <p>15      A. I don't recall my department ever</p> <p>16      preparing, you know, preparing this information.</p> <p>17      Q. Okay. Do you see up at the top it</p> <p>18      says "Fed Facility" and then it has a column</p> <p>19      that says "Haircut"?</p> <p>20      A. Uh-huh.</p> <p>21      Q. We had previously talked about what</p> <p>22      kind of haircut the Fed was insisting on in its</p> <p>23      financing that was provided to Barclays during</p> <p>24      this period.</p> <p>25      Do you have any understanding of</p>

Page 226	Page 227
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   whether those are the haircut amounts that the</p> <p>3   Fed used in connection with that financing?</p> <p>4       A.   No, I --</p> <p>5       MR. STERN: I just need to -- let me</p> <p>6       just --</p> <p>7       Can you read that question?</p> <p>8       (Record read.)</p> <p>9       MR. STERN: You can answer.</p> <p>10      A.   I don't know of these -- how these</p> <p>11      haircuts compared to the Fed haircuts.</p> <p>12      Q.   Okay. Is it fair to say that's not an</p> <p>13      issue that you were working on at the time?</p> <p>14      A.   The haircuts at the Fed are determined</p> <p>15      by the Fed.</p> <p>16      Q.   Right.</p> <p>17      A.   To borrow money from the Fed, you have</p> <p>18      to post the required haircuts.</p> <p>19      Q.   Right.</p> <p>20      A.   So there's no -- it's a, you know,</p> <p>21      standard schedule. What these haircuts are, I</p> <p>22      don't know what they -- I don't know what these</p> <p>23      haircuts refer to.</p> <p>24      Q.   Okay.</p> <p>25      A.   I don't know what facility they're</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2   talking about and what the data means relative</p> <p>3   to the facility.</p> <p>4      Q.   Mr. Coghlan, did you ever hear any</p> <p>5      reference during the week of September 15 to a</p> <p>6      HIC loan in connection with the Barclays/Lehman</p> <p>7      transaction?</p> <p>8      A.   Between Barclays and Lehman? A HIC</p> <p>9      loan?</p> <p>10     Q.   No, just in relation to that</p> <p>11     transaction in any way.</p> <p>12     A.   No, I did not hear anything.</p> <p>13     Q.   HIC loan, what does that mean?</p> <p>14     A.   Hold in custody. So what it means is</p> <p>15     you lend me money, but instead of me delivering</p> <p>16     the collateral to where you would like it</p> <p>17     delivered, the counterparty holds it in custody</p> <p>18     for your behalf.</p> <p>19     Q.   Did you have any understanding of any</p> <p>20     HIC loans that were being entered into during</p> <p>21     that week of September 15?</p> <p>22     A.   I did not know of any HIC loans being</p> <p>23     originated during that week.</p> <p>24     Q.   Is that something that would have</p> <p>25     fallen within your department, or elsewhere?</p>
Page 228	Page 229
<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2       A.   We at times traded hold in custody,</p> <p>3       yes, at times we would have hold in custody</p> <p>4       arrangements with counterparties in my business</p> <p>5       and to finance the firm. I was not aware of any</p> <p>6       hold in custody as it related to the Barclays</p> <p>7       transaction.</p> <p>8       Q.   Okay. Are you aware of any</p> <p>9       discussions involving residential mortgages that</p> <p>10      related in any way to the Barclays/Lehman</p> <p>11      transaction?</p> <p>12      A.   No, I was not privy to any</p> <p>13      conversations relative to residential mortgages.</p> <p>14      Q.   Okay. Mr. Coghlan, I'm very close to</p> <p>15      the end here. I just wanted to go over a couple</p> <p>16      of documents to see if you could help me with</p> <p>17      respect to just understanding some of the</p> <p>18      systems at Lehman.</p> <p>19      A.   Okay.</p> <p>20      Q.   In your department did you work with</p> <p>21      something called an MTS system?</p> <p>22      A.   MTS was a system that we used.</p> <p>23      Q.   And what is that system?</p> <p>24      A.   It's one of the systems used to</p> <p>25      support financing and firm market-making</p>	<p>1       HIGHLY CONFIDENTIAL - J. COGHLAN</p> <p>2      activities. It's a settlement -- it's a system</p> <p>3      to help settle those types of transactions.</p> <p>4      Q.   And are you familiar with that system?</p> <p>5      A.   I'm familiar with that we use the</p> <p>6      system. I would not view myself as an expert in</p> <p>7      what the system does and doesn't do.</p> <p>8      Q.   Okay. How about something that's</p> <p>9      known as a blotter; is that a term you've heard</p> <p>10     used at Lehman?</p> <p>11     A.   I don't recall hearing that term.</p> <p>12     Q.   Okay. Have you ever heard of anything</p> <p>13     referred to as an MTS blotter?</p> <p>14     A.   I've heard of the term "MTS." I'm not</p> <p>15     certain what an MTS blotter would be.</p> <p>16     Q.   Okay. I'm going to parade out a huge</p> <p>17     exhibit right now and I just want to see if you</p> <p>18     have any knowledge of it. And please don't get</p> <p>19     scared by its size.</p> <p>20     A.   Oh, ghees. Okay.</p> <p>21     Q.   You're welcome to page through it as</p> <p>22     you like, but I just have a couple of questions</p> <p>23     about it.</p> <p>24           (Exhibit 134, MTS Blotter, marked for</p> <p>25           identification, as of this date.)</p>

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HIGHLY CONFIDENTIAL - J. COGHLAN

Q. Mr. Coghlan, it's a huge exhibit. I don't expect you to be familiar with everything in it. My question is, have you ever seen a document or a spreadsheet like this?

My understanding it's known as MTS blotter, so I wanted to see if you have ever seen anything like this.

A. I have not seen this report before.

Q. Okay. I don't mean to limit your question to a printed out version of this report. Does this look like a database that would be maintained on the MTS system?

A. I don't know. I just don't know.

Q. Are you not sufficiently familiar with the MTS system to answer that question?

A. Yeah, I -- I would say that's accurate. That's true.

Q. Okay. Are there others at Lehman that I could more fruitfully ask questions about the MTS system?

A. I'm sure there are people that know the MTS system. Who those people are I don't know off the top of my head.

Q. Let me ask it this way: Is the folks

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HIGHLY CONFIDENTIAL - J. COGHLAN

that work for Mr. Blackwell, like Mr. Hraska, would he be familiar with the MTS system, do you think?

A. I believe so.

Q. Do you think he uses that on a regular basis?

A. I don't know how often he was involved in it.

Q. Okay. If I asked you questions about this document, do you have any familiarity with the entries in the different columns?

A. I'll try to answer as best I can.

This is not my area of knowledge.

Q. Okay. I understand.

A. So I --

Q. I'm not trying to do anything cute here. I'm just trying to better understand the systems at Lehman.

A. There are people more qualified than I --

Q. Okay.

A. -- to do that. I mean, again, I'm happy to answer your questions.

Q. Well, maybe you can -- let's just try

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HIGHLY CONFIDENTIAL - J. COGHLAN

a couple and then we'll see where it goes.

On the front page, there's a series of entries leading down to -- in the column entitled "Net Amount," there's a series of entries that appear to total --

A. Uh-huh.

Q. -- to a \$44.9 billion number, do you see that?

A. Uh-huh. Uli-huh.

Q. And then there's followed by a series of entries with zeros in that column. Are those free repos, the ones that are denominated with a zero?

A. I, from this report, I couldn't tell.

Q. You couldn't tell. Okay.

In the left hand, toward the left-hand side, there's something called "Security Descriptor," and you see terms like -- two terms: "Specified Corporate" and the other one is "AGY Secured Cash for Carry."

A. I'm sorry, we're looking at where?

Q. I'm in the fourth column which is entitled "Security Descriptor"?

A. Yes.

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HIGHLY CONFIDENTIAL - J. COGHLAN

Q. Do those terms mean anything to you, "Specified Corporates"?

A. No.

Q. How about A --

MR. STERN: Let's go off the record for a second.

(Discussion off the record.)

Q. Does that other entry on that column entitled "AGY Secured Cash for Carry" mean anything to you, Mr. Coghlan?

A. No, I don't know what that means.

Q. Okay. Let's put that exhibit aside.

(Exhibit 135, screen shot from the MTS system, marked for identification, as of this date.)

Q. Mr. Coghlan, I'm handing you a copy of an exhibit marked 135, which appears to be a screen shot of some sort from what I believe to be the MTS system, but I wanted to ask you if you recognize this.

A. I do not recognize this.

Q. Okay. This is not a screen shot that you would be familiar with in the normal course of your business?

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 A. No, I've never seen this before.  
3 Q. Okay. Fair enough.  
4 Mr. Coghlan, just one or two more  
5 questions. Does Barclays run a matched book now  
6 that you have been there?  
7 A. Yes, they do.  
8 Q. So the same -- you had previously  
9 described for me what a matched book is. The  
10 same effort to maintain a matched book to a  
11 certain extent is being undertaken by Barclays  
12 today?  
13 MR. STERN: Objection to the form.  
14 Q. That was a bad question. Let me try  
15 again.  
16 In your current function at Barclays,  
17 is it your general understanding that you're  
18 trying to maintain a matched book?  
19 MR. STERN: Objection to the form.  
20 A. We run a matched book, and as I  
21 described, similarly, it means that the assets  
22 and the liabilities are fairly close to each  
23 other, other than haircuts and things like that,  
24 and to that extent that it's, quote, matched  
25 assets and liabilities, it would be similar to

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 that it received from Lehman?  
3 A. I don't know who did that firsthand.  
4 I assume we could go back and find out, but I  
5 don't know who -- I don't know who did that.  
6 Q. Do you know what department did that?  
7 A. No, I do not.  
8 MR. HINE: Mr. Coghlan, I have no  
9 further questions. I think some of my  
10 colleagues might, but we're done.  
11 MR. KAY: No questions from the  
12 Committee.  
13 MR. LAYDEN: No.  
14 MR. STERN: Let's take a little break.  
15 I may have some questions.  
16 (Pause in the proceedings.)  
17 EXAMINATION BY  
18 MR. STERN:  
19 Q. I have just a few clarifying  
20 questions. Mr. Coghlan, you were asked some  
21 questions earlier concerning your understanding  
22 as to how excess collateral is treated in  
23 certain repo default situations.  
24 What was the basis for the  
25 understanding you testified to?

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 what the matched book activities were at Lehman.  
3 Q. Okay. And is Stephen King involved in  
4 that activity?  
5 A. Stephen?  
6 Q. A man named Stephen King?  
7 A. No, he's not.  
8 Q. Do you know what his role is at  
9 Barclays?  
10 A. I do not know what he does.  
11 Q. Okay. Do you know him?  
12 A. I know the name.  
13 Q. Do you have any understanding of how  
14 Barclays valued the assets that it acquired from  
15 Lehman?  
16 A. No, I have no understanding of that.  
17 Q. Okay. Do you have any understanding  
18 of whether they adopted the valuations placed in  
19 those assets by Bank of New York?  
20 A. I do not know what the valuations are,  
21 so I wouldn't know how -- the difference, if  
22 any, between Bank of New York and Barclays.  
23 Q. Do you know the name of someone at  
24 Barclays that I could ask who might have  
25 knowledge about how Barclays valued the assets

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1 HIGHLY CONFIDENTIAL - J. COGHLAN  
2 A. The answer given was based on  
3 conversations I've had with counsel on several  
4 occasions at Lehman Brothers.  
5 Q. Do you recall the specific Repurchase  
6 Agreements or arrangements Lehman counsel was  
7 considering when you received that legal advice?  
8 MR. HINE: Objection. You are not  
9 authorized to waive privilege with respect  
10 to those conversations with counsel.  
11 MR. STERN: I'm just asking whether he  
12 recalls what those agreements were. It's a  
13 yes or no answer.  
14 Q. Let me restate the question. Do you  
15 recall the specific Repurchase Agreements or  
16 arrangements that Lehman counsel was considering  
17 when you received that legal advice, yes or no?  
18 A. No.  
19 Q. Have you had any personal experience  
20 where, in actual practice, excess collateral was  
21 returned after a repo default?  
22 A. Not that I can recall.  
23 Q. You were asked questions earlier about  
24 running a matched book. Can you describe to us  
25 what you understand that term "matched book" to

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<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 mean? 3 A. The matched book was a business at 4 Lehman that was a revenue-generating department 5 whose revenues were generated by the lending of 6 cash and collateral with counterparties, with 7 the intent of making a positive spread on that 8 lending activity. 9 MR. STERN: I have no further 10 questions. 11 MR. HINE: I have no further 12 questions. 13 MR. KAY: No questions. 14 MR. STERN: Thank you, Mr. Coghlan. 15 We're off the record. 16 MR. HINE: Thank you very much. 17 (Time Noted: 3:11 P.M.) 18 oOo 19 20 21 22 23 24 25</p> <p style="text-align: center;">_____ JOHN COGHLAN</p> <p>Subscribed and sworn to before me this day of 2009.</p> <p>_____</p>	<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 CERTIFICATE 3 STATE OF NEW YORK ) 4 : ss 5 COUNTY OF NEW YORK) 6 I, Kathy S. Klepfer, a Registered 7 Merit Reporter and Notary Public within and 8 for the State of New York, do hereby 9 certify: 10 That JOHN COGHLAN, the witness whose 11 deposition is herein before set forth, was 12 duly sworn by me and that such deposition is 13 a true record of the testimony given by such 14 witness. 15 I further certify that I am not 16 related to any of the parties to this action 17 by blood or marriage and that I am in no way 18 interested in the outcome of this matter. 19 I further certify that neither the 20 deponent nor a party requested a review of 21 the transcript pursuant to Federal Rule of 22 Civil Procedure 30(e) before the deposition 23 was completed. 24 In witness whereof, I have hereunto 25 set my hand this 13th day of August, 2009.</p> <p style="text-align: center;">-----</p>
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<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 INDEX 3 TESTIMONY OF J. COGHLAN: PAGE 4 Examination by Mr. Hine ..... 5 5 Examination by Mr. Stern ..... 236 6 7 EXHIBITS: PAGE 8 Exhibit 115, a document bearing Bates ..... 22 9 Nos. BCI-EX-00077294 through 77295 10 Exhibit 116, a document bearing Bates ..... 72 11 Nos. 10303063 12 Exhibit 117, Master Purchase Agreement ..... 77 13 Exhibit 118, a document bearing Bates ..... 99 14 Nos. 10297296 and 10300641 15 Exhibit 119, a document bearing Bates ..... 102 16 Nos. 10302495 17 Exhibit 120, an e-mail string, the first ... 110 18 one in time dated September 17, 2008, at 19 6:31 P.M. 20 Exhibit 121, an e-mail string, the first ... 124 21 one in time dated September 17, 2008, at 22 6:25 P.M. 23 Exhibit 122, an e-mail string, the first ... 126 24 one in time dated September 17, 2008 at 25 6:39 P.M.</p>	<p>1 HIGHLY CONFIDENTIAL - J. COGHLAN 2 INDEX (Cont'd.) 3 EXHIBITS: PAGE 4 Exhibit 123, a document bearing Bates ..... 128 5 Nos. 68985 6 Exhibit 124, a document bearing Bates ..... 132 7 Nos. 10303258 8 Exhibit 125, covering e-mail with chart .... 138 9 with the heading "Booking Amounts" 10 Exhibit 126, an e-mail stream, the first ... 178 11 one in time dated September 18, 2008, 12 at 6:18 A.M. 13 Exhibit 127, an e-mail stream, the first ... 190 14 one in time dated September 18, 2008, 15 at 6:04 A.M. 16 Exhibit 128, an e-mail stream, the first ... 199 17 in time dated September 19, 2008, at 18 2:44 P.M. 19 Exhibit 129, an e-mail stream, the first ... 207 20 one in time dated September 19, 2008, at 21 2:26 P.M. 22 Exhibit 130, an e-mail dated September 19, 211 23 2008, at 3:22 P.M. 24 25</p>

HIGHLY CONFIDENTIAL - J. COGHLAN

NAME OF CASE: In re Lehman Brothers

DATE OF DEPOSITION: August 13, 2009

Reason Codes:

1. To clarify the record,

3. To correct transcription errors.

Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

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# BCI EXHIBIT

61

HIGHLY CONFIDENTIAL - A. COX  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In Re:

Chapter 11  
LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.  
-----X

\* \* \*HIGHLY CONFIDENTIAL\* \* \*

DEPOSITION OF ARCHIBALD COX

New York, New York

September 11, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24300

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 September 11, 2009 3 10:19 a.m. 4 5 HIGHLY CONFIDENTIAL deposition 6 of ARCHIBALD COX, held at the law 7 offices of Jones Day, LLP, 222 East 8 41st Street, New York, New York, before 9 Kathy S. Klepfer, a Registered Professional 10 Reporter, Registered Merit Reporter, 11 Certified Realtime Reporter, Certified 12 Livenote Reporter, and Notary Public 13 of the State of New York. 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 3 A P P E A R A N C E S: 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: JAYANT W. TAMBE, ESQ. 9 BART GREEN, ESQ. 10 11 BOIES, SCHILLER &amp; FLEXNER, LLP 12 Attorneys for Barclays and the Witness 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JACK G. STERN, ESQ. 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A P P E A R A N C E S: (Cont'd.) 3 JENNER &amp; BLOCK, LLP 4 Attorneys for the Examiner 5 330 N. Wabash Avenue 6 Chicago, Illinois 60611-7603 7 BY: VINCENT LAZAR, ESQ. 8 9 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 10 Attorneys for the Creditors Committee 11 51 Madison Avenue 12 22nd Floor 13 New York, New York 10010 14 BY: JAMES C. TECCE, ESQ. 15 16 HUGHES, HUBBARD &amp; REED, LLP 17 Attorneys for the SIPA Trustee 18 1775 I Street, N.W. 19 Washington, D.C. 20006-2401 20 BY: JOHN WOOD, ESQ. 21 FARA TABATABAI, ESQ. (Afternoon Session) 22 23 Also Present: 24 PHILIP E. KRUSE, Alvarez &amp; Marsal 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 ARCHIBALD COX, called as a 3 witness, having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MR. TAMBE: 8 Q. Good morning, Mr. Cox. My name is Jay 9 Tambe. I'm with Jones Day. We're special 10 counsel to Lehman Brothers Holdings, Inc. With 11 me is my colleague Bart Green, and I'll let the 12 other lawyers around the table introduce 13 themselves to you. 14 MR. WOOD: John Wood from Hughes, 15 Hubbard &amp; Reed. We represent the SIPA 16 Trustee. 17 MR. SPENCER: George Spencer. I'm 18 also with Jones Day. 19 MR. TECCE: James Tecce with Quinn 20 Emanuel. We are counsel to the Creditors 21 Committee. 22 MR. LAZAR: Vince Lazar from Jenner &amp; 23 Block, representing the Examiner. 24 MR. KRUSE: Phil Kruse with Alvarez &amp; 25 Marsal on behalf of the LBHI Estate.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 BY MR. TAMBE: 3 Q. Mr. Cox, by whom are you currently 4 employed? 5 A. Barclays. 6 Q. And you've been with Barclays for how 7 long? 8 A. Since May last year. 9 Q. And what's your current position with 10 Barclays? 11 A. Title is Chairman of the Americas. 12 Q. And was that the title you had when 13 you joined Barclays a year ago? 14 A. Yes. 15 Q. I'm going to ask you a series of 16 questions about the Lehman/Barclays transaction 17 and your involvement in it. 18 What's your earliest recollection of 19 your personal involvement in the Lehman/Barclays 20 transaction? 21 A. It was on the Friday, I guess, 22 preceding the week -- the Monday that Lehman 23 filed for bankruptcy. 24 Q. You got a calendar that's for your 25 reference before you that's for the month of TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 September 2008. You can keep that in front of 3 you for reference. I believe the Friday before 4 Lehman filed for bankruptcy was the 12th? 5 A. Yes. 6 Q. Prior to the 12th, had you been 7 involved in any preliminary discussions with 8 Lehman about a possible transaction or 9 acquisition? 10 A. I was not involved in any discussions 11 with Lehman. 12 Q. Do you know if Barclays had been 13 involved in any discussions prior to the 12th 14 with Lehman? 15 A. I don't know of any. 16 Q. Starting from the 12th, Friday the 17 12th, how long did your personal involvement in 18 the Barclays/Lehman transaction last in the 19 negotiation, execution, et cetera, of that 20 transaction? 21 A. It lasted through the morning of the 22 22nd or -- yes. 23 Q. And the morning of the 22nd was when 24 the clarification letter was executed and the 25 transaction closed; is that correct? TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. Correct. 3 Q. After the 22nd, just broadly, what has 4 been your involvement with the either the 5 accounting for the transaction or the valuation 6 of the transaction? Have you had any 7 involvement in that? 8 A. No. 9 Q. If you could broadly describe what 10 role you played during that time period between 11 the 12th of September and the 22nd of September 12 in connection with the Lehman/Barclays 13 transaction. 14 A. I was one of several people involved 15 in the negotiations around the transaction. 16 Q. Who were the other people involved in 17 the negotiation of the transaction from the 18 Barclays side? 19 A. Well, there were numerous people 20 involved in various aspects of it. What aspects 21 in particular are you talking about? 22 Q. As Barclays approached the 23 negotiation, was there a lead negotiating team 24 or core negotiating team? 25 A. I guess Michael Klein and I were TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 initially the lead negotiators. 3 Q. And you said "initially." Did that 4 change as the week went on? 5 A. As matters progressed, other people 6 became involved, heavily involved, as well. 7 Q. And other than yourself and Michael 8 Klein, who were the other people who became 9 heavily involved as things progressed? 10 A. Well, Rich Ricci became involved. 11 Gerard LaRocca became involved in certain 12 aspects of it. There were people in the Fixed 13 Income Department that became involved in 14 valuations, you know, valuations of securities. 15 Obviously there were a lot of people involved in 16 a transaction of this size. 17 Q. As part of your involvement with the 18 transaction, did you ever go down to bankruptcy 19 court for any of the hearings? 20 A. I went down for the hearing on the 21 19th I guess it was. 22 Q. And did you stay for the duration of 23 that hearing? 24 A. I'm afraid to say I did. 25 Q. You did or you didn't? TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       A. I did. 3       Q. You did. So you were there for the 4       applause after midnight? 5       A. I was there until 1, I something, yes. 6       I don't remember the applause, but yes. 7       Q. In terms of the legal documentation 8       for the transaction, the Asset Purchase 9       Agreement, the Clarification Letter, the First 10      Amendment, did you play any role in reviewing 11      drafts or commenting on drafts of those 12      documents? 13      A. Very limited. We left that largely in 14      the hands of the lawyers. 15      Q. We've had the opportunity to speak 16      with Mr. Varley about his understanding of the 17      transaction, and he has described that period 18      between the 12th and the 22nd as broken up into 19      sort of the way he defines it is three 20      transactions, Lehman 1, Lehman 2 and Lehman 3. 21      Is that a nomenclature that you're 22      familiar with? 23      A. No. 24      Q. What he meant by that was the change 25      in the contemplated transaction from the TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       pre-bankruptcy weekend and then the change that 3       took place during the week of the 15th. Is that 4       your recollection, that this was an evolving 5       transaction during that time period? 6       A. I'm sorry, you said he said there were 7       three. You only mentioned two. 8       Q. One was over the weekend 9       pre-bankruptcy, two was the APA Asset Purchase 10      Agreement, three is the deal that actually was 11      executed. 12      A. I would regard it was two. One was 13      the pre-bankruptcy and one was the when the deal 14      was finally negotiated. 15      Q. In your mind, sir, was there any 16      significant difference between the deal that was 17      negotiated on the Monday and Tuesday of the 18      week, the 15th and the 16th of September, and 19      the deal that was executed on the 22nd of 20      September? 21      MR. STERN: Objection to the form. 22      A. I'm not -- would you repeat the 23      question? I'm not sure I follow that. 24      Q. Sure. In your mind was there any 25      significant difference between the deal TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       negotiated on the 15th and the 16th of September 3       and the deal that was executed, that was closed 4       on, on the 22nd of September? 5       A. Not significant difference, no. 6       Q. What differences, if any, what 7       differences, if any, come to your mind between 8       the deal negotiated on the 15th and 16th and the 9       one that closed on the 22nd? 10      A. There were, to my mind, there were 11      clarifications of certain points that were made, 12      but that's, as to the detail, I simply don't 13      remember. 14      Q. In terms of any differences in the 15      assets that were contemplated to be purchased in 16      the deal that was negotiated on the 15th and 17      16th and the assets that were actually purchased 18      at the closing on the 22nd, any significant 19      differences in those assets, in your mind? 20      A. There were some differences, yes. 21      Q. And what accounted for those 22      differences? 23      A. There were some differences, as I 24      remember it, in the availability of some 25      securities and there were some differences TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       occasioned by JPMorgan not releasing some 3       securities. Exactly which securities I can't 4       tell you. 5       Q. And did you have a sense that these 6       differences in the securities and the 7       differences between the transaction as 8       negotiated and the transaction as closed, 9       whether those affected the fundamental economics 10      of the transaction from Barclays' perspective? 11      MR. STERN: Objection to the form. 12      A. Repeat the question, please. 13      Q. Basically, did you end up with -- did 14      you end up closing a transaction that, from an 15      economic perspective, from Barclays' 16      perspective, was fundamentally different than 17      the deal you had negotiated at the beginning of 18      the week? 19      A. To my mind, the fundamental difference 20      was the situation we were in with JPMorgan, 21      which -- where we had a significant exposure, 22      very significant exposure, that we didn't 23      envisage at the beginning of the week. 24      Q. Other than the JPMorgan situation in 25      terms of the assets acquired from Lehman, did TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - A. COX

2 you believe that there was a significantly  
3 different economic effect of those assets that  
4 were actually acquired versus what you  
5 contemplated acquiring?

6 A. There was a lesser quantity, but not a  
7 significant difference, no.

8 Q. Were you involved in making any  
9 presentations to the Barclays board about any  
10 iteration or aspect of the Lehman transaction?

11 A. No.

12 Q. Let's start with the 12th, and if you  
13 could describe for us the period between the  
14 12th and the 14th, the Sunday, so the Friday  
15 through the Sunday, what your involvement was  
16 with the contemplated Lehman transaction at that  
17 time period?

18 A. On the late afternoon I believe of the  
19 12th, as best I can remember, it was a busy  
20 time. We met at the offices of Simpson Thacher  
21 for most, if not all of the night. Then the  
22 next day we met down at the Federal Reserve on  
23 the Saturday and were there for most of the day,  
24 and the following morning we reconvened at the  
25 Federal Reserve until -- I guess we left the

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1 HIGHLY CONFIDENTIAL - A. COX

2 Q. Do you have an understanding of the  
3 type of due diligence, if any, that was done by  
4 Barclays over the weekend?

5 A. We did as much as we could in the  
6 timeframe allowed.

7 Q. Do you know any of the components of  
8 the due diligence?

9 A. Not specifically.

10 Q. Why did that contemplated transaction  
11 not go forward?

12 A. It went forward because there was no,  
13 no entity that was -- that was able to -- would  
14 or was able to guarantee the ongoing obligations  
15 of Lehman Holdings before a transaction could  
16 close.

17 Q. I just want to make sure we have your  
18 answer down. It did not go forward because  
19 there was no party that would guarantee the  
20 ongoing obligations?

21 A. That could or would guarantee is what  
22 I said.

23 Q. Now, on Monday, the 15th, Lehman filed  
24 for bankruptcy, right?

25 A. Yes.

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2 Federal Reserve sometime after noon.

3 Q. On Sunday?

4 A. On Sunday.

5 Q. And when you left the Federal Reserve  
6 at noon on Sunday, what was the status of the  
7 discussions with Lehman or concerning Lehman?

8 A. The transaction as originally  
9 envisaged was off, was -- was off, period.

10 Q. And the transaction that was  
11 envisioned, could you describe what that  
12 transaction was?

13 A. It was a transaction that involved  
14 splitting -- it was similar to the transaction  
15 that Lehman had proposed actually initially for  
16 themselves. Splitting the bad bank, good bank  
17 transaction.

18 Q. And the contemplation was that  
19 Barclays would invest in the good bank?

20 A. Yes.

21 Q. And the government would provide a  
22 backstop or some kind of guarantee with respect  
23 to the bad bank?

24 A. Yes, that some party was. The  
25 government, either the Fed or the Treasury.

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1 HIGHLY CONFIDENTIAL - A. COX

2 Q. At some point on Monday, Barclays  
3 reengaged in discussions with Lehman; is that  
4 correct?

5 A. Yes.

6 Q. How did that come about?

7 A. It came about, as I understand it,  
8 through a telephone call on Sunday evening to  
9 Bob Diamond.

10 Q. From?

11 A. I believe it was from Bart McGee.

12 Bart -- not McGee.

13 MR. STERN: McDade.

14 A. Yes, McDade.

15 Q. And did Bart McDade propose any  
16 particular type of transaction to Mr. Diamond?

17 A. I don't know.

18 Q. I assume you and Mr. Diamond had a  
19 conversation about that overture from Bart  
20 McDade?

21 A. We did on -- yes, we did.

22 Q. And then you reengaged in discussions  
23 with Lehman, correct?

24 A. Correct.

25 Q. Before you reengaged with Lehman, did

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1 HIGHLY CONFIDENTIAL - A. COX  
2 you have conversations with other folks at  
3 Barclays about the terms under which you were  
4 going to reengage, what kind of deal you were  
5 going to discuss with Lehman?

6 A. I don't remember exactly what we  
7 discussed.

8 Q. Now, Michael Klein, was he on the  
9 scene this weekend, the 12th, 13th, 14th?

10 A. Yes.

11 Q. And I assume he had been involved in  
12 these discussions over the weekend; is that  
13 right?

14 A. Isn't that what the 12th, 13th and  
15 14th was? Didn't you just ask that question?

16 Q. Yeah. And he was involved in those  
17 discussions?

18 A. That's what I said.

19 Q. And he was at the Fed?

20 A. That's what I said, yes.

21 Q. And when you reengaged with Lehman on  
22 the 15th, is he also involved in those  
23 discussions?

24 A. I don't remember specifically.

25 Q. When you go back and reengage with

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2 their business did we want to try to acquire,  
3 basically people.

4 Q. Was there --

5 A. And how would we do that.

6 Q. Was there someone on the Barclays  
7 negotiating team who was charged with focusing  
8 on what assets to purchase, physical assets?

9 A. It would have been from the Fixed  
10 Income Department, yes.

11 Q. And who would that have been?

12 A. Largely I believe it was Mike Keegan  
13 and Stephen.

14 Q. Stephen?

15 MR. STERN: King.

16 A. King.

17 Q. Describe the scene on the 15th when  
18 you reengaged with Lehman. Who is at the  
19 meeting? What are the discussions? I want to  
20 understand the process that resulted in the  
21 Asset Purchase Agreement that gets signed the  
22 next day.

23 A. I don't remember exactly who -- who  
24 was there and what the process was at this point  
25 in time.

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1 HIGHLY CONFIDENTIAL - A. COX  
2 Lehman on the 15th, what's the deal that you're  
3 seeking?

4 A. I don't really remember exactly how  
5 the transaction came into being, the idea of  
6 what form the transaction would take.

7 Q. The deal that was negotiated and  
8 signed on the 16th was the deal for the purchase  
9 of certain assets of Lehman, correct?

10 A. Yes.

11 Q. What role did you play in structuring  
12 that deal?

13 A. I was involved in the negotiations  
14 around part of the structuring of the deal, not  
15 in the identifying of the assets that we would  
16 take.

17 Q. So what part of the structuring of the  
18 deal were you involved in?

19 A. Well, in the decisions of what did we  
20 want, did we want people in the U.S., did we  
21 want the people in Europe, did we want the  
22 people in as well in Asia, did we want -- so it  
23 was more a question of how the deal would be  
24 structured, in a sense, not just purchase of  
25 assets, but what did we want -- what parts of

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1 HIGHLY CONFIDENTIAL - A. COX

2 Q. Do you remember the physical setting,  
3 where it took place, where the discussions took  
4 place?

5 A. I do not remember specifically where  
6 the discussions took place. During -- I will  
7 say during the week, the early part of the week,  
8 many of the discussions took place in Lehman's  
9 offices.

10 Q. The Asset Purchase Agreement has a  
11 definition of "Purchased Assets." Are you  
12 familiar with that, sir?

13 A. I'm familiar with the existence of the  
14 agreement, yes.

15 Q. In the Asset Purchase Agreement,  
16 there's a reference to \$70 billion of long  
17 positions and roughly \$69 billion of short  
18 positions. Are you familiar with those  
19 definitions?

20 A. I'm familiar with the approximate  
21 amounts; not with the exact language in the  
22 agreement.

23 Q. Do you have an understanding as to how  
24 those numbers were arrived at, the 70 billion in  
25 long and the 69 in short?

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<p>1       HIGHLY CONFIDENTIAL - A. COX 2       A. No. 3       Q. Were you aware of any efforts on 4 Monday, the 15th, or Tuesday, the 16th, to mark 5 down the assets that were on Lehman's books and 6 that were going to be purchased by Barclays? 7       A. I don't believe there was any attempt 8 made to mark down assets as that -- in the 9 connotation I understand your question. 10      Q. Are you aware of any discussions for a 11 haircut or a cushion on the value of those 12 assets versus what Barclays would be paying for 13 those assets? 14      A. No. 15      Q. Are you aware if the deal as 16 negotiated and set forth in the Asset Purchase 17 Agreement contains a discount or a cushion for 18 Barclays? 19      A. No. 20      Q. You don't know one way or the other? 21      A. I don't know one way or the other. I 22 will say -- let's not forget the environment in 23 which one was dealing and where valuation of 24 securities was a very difficult matter, and I 25 believe there were attempts made by both parties</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - A. COX 2 to reasonably value the securities and I think 3 that's the environment in which we were 4 operating. But it was a very difficult 5 environment in which to value securities. 6       Q. That's kind of why I asked the 7 question. It was a difficult environment. You 8 were contemplating taking onto your books a 9 fairly large collection of securities, correct? 10      A. Yes. 11      Q. What efforts, if any, did Barclays 12 make on Monday and Tuesday of that week to try 13 and put a value on those securities that it was 14 taking on? 15      A. I think, I believe a -- an effort was 16 made to mark the securities and tend to agree 17 with Lehman as to what those reasonable marks 18 were. 19      Q. That process, to mark the securities 20 and to agree with Lehman as to what the 21 reasonable marks were, who was running that 22 process from the Barclays side? 23      A. I don't know. The Fixed Income 24 Department was responsible for that. 25      Q. Are you aware if the Fixed Income</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1       HIGHLY CONFIDENTIAL - A. COX 2 Department was given any target of a cushion or 3 a discount to build into that marking process? 4       A. No. 5       Q. You don't know one way or the other? 6       A. I don't believe they were. I know of 7 no such. 8       Q. Did you see any drafts of the Asset 9 Purchase Agreement before it gets executed by 10 the parties? 11      A. Did I see drafts? You mean did 12 somebody show me the document? Yes. 13      Q. Did you review them? 14      A. No, that was -- the review of them was 15 really left to the lawyers. If there were 16 business issues, I might have been involved in 17 those, but not in reviewing the documents. 18      Q. Who, if anyone, was checking the 19 document that's being processed, the Asset 20 Purchase Agreement, versus the business terms 21 that are being negotiated between the business 22 people? 23      A. Counsel, both internal and external. 24      Q. And you were specifically negotiating 25 particular business terms of this transaction,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1       HIGHLY CONFIDENTIAL - A. COX 2 correct? 3       A. Yes. 4       Q. Did you check the Asset Purchase 5 Agreement to see if the business terms that you 6 individually had negotiated were reflected in 7 the Asset Purchase Agreement? 8       A. In a -- in some cases, a few cases, 9 yes. 10      Q. What specific business terms were you 11 individually negotiating? 12      A. I don't recall at this point. 13      Q. You've told us earlier about, you 14 know, what aspects of the business would be 15 acquired by Barclays. Was that one of the 16 things that you were focused on? 17      A. Yes. Yes. 18      Q. In terms of employees and operations? 19      A. Yes. 20      Q. I understand from your earlier answers 21 you were not the person focusing on the 22 particular assets to be purchased, the 23 securities to be purchased? 24      A. Correct. 25      Q. Correct?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>



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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. Correct. 3 Q. Someone else was doing that? 4 A. Yes. 5 Q. And that someone else would be 6 reviewing, presumably, the Asset Purchase 7 Agreement to make sure that the document 8 reflected the business deal, correct? 9 MR. STERN: Objection to the form. 10 A. At least they would be making sure 11 with counsel that that was what happened. 12 Q. At the beginning of the week, as far 13 as you knew, there was no contemplation of 14 Barclays stepping into the shoes of the Fed 15 repo, correct? 16 A. I don't remember specifically, but -- 17 at the very beginning of the week? 18 Q. Yes, the Monday/Tuesday. 19 A. I don't think on Monday that was -- 20 that was an issue. 21 Q. And as far as you know, when the Asset 22 Purchase Agreement was executed on the 16th, 23 that was not an issue, correct? 24 A. I don't remember the exact sequencing 25 of the timeframe of when the Asset Purchase TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Agreement was executed and when -- and when we 3 were asked to step into the shoes. 4 Q. What's your earliest recollection of 5 when you were asked to step into the shoes of 6 the Fed? 7 A. Middle of the week. 8 Q. And what is it that you recall about 9 that? 10 A. Very little other than the fact that 11 we were asked to step into the shoes. 12 Q. Were you involved in that aspect of 13 the transaction, which is having conversations 14 with the Fed or internally about what it meant 15 to step into the shoes of the Fed? 16 A. No. 17 Q. Was there someone else on the 18 negotiating team who led that effort? 19 A. Yes. 20 Q. Who was that? 21 A. Gerard LaRocca, principally, I 22 believe. I'm also sure there were others 23 involved as well. 24 Q. Do you recall there being any 25 discussions as to whether the Asset Purchase TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Agreement should be amended in the middle of the 3 week when you learned about the Fed repo issue? 4 A. I don't recall that. 5 Q. Do you know if the Asset Purchase 6 Agreement was ever amended to reflect the Fed 7 repo? 8 A. No, I don't know if it was amended 9 specifically for that. 10 Q. There were certain operational 11 difficulties that were experienced later on in 12 the week in connection with the Fed repo, do you 13 recall that? 14 A. Yes, I know that -- yes. 15 Q. What was your involvement, if any, in 16 assessing those difficulties, responding to 17 those difficulties, dealing with those 18 difficulties? 19 A. I only knew of them. I wasn't 20 involved in the negotiations. 21 Q. And who was involved in the 22 negotiations? 23 A. Again, Gerard LaRocca was clearly 24 involved. There were undoubtedly other people 25 involved as well. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Q. When you were down in court on Friday, 3 the 19th, do you know whether a copy of the 4 clarification letter was submitted to the court? 5 A. I do not know. 6 Q. Over the weekend, the weekend of the 7 20th/21st, do you recall whether you reviewed 8 any draft of the clarification letter? 9 A. I do not. 10 Q. Do you have any memory of having seen 11 the clarification letter before it was executed? 12 A. No. 13 Q. Is it your belief that in fact you 14 were not provided with drafts of the 15 clarification letter? 16 A. I simply don't remember. 17 Q. When is the last time you reviewed the 18 clarification letter? 19 A. I think I said I don't remember 20 reviewing it at all, so I -- I guess I haven't 21 reviewed it. 22 (Exhibit 413B, a document bearing 23 Bates Nos. BCI-EX-(S)-26269, marked for 24 identification, as of this date.) 25 Q. Sir, I have placed before you a TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 document we marked Exhibit 413B. Take a moment 3 to review it and let me know when you're done. 4 (Document review.) 5 Q. You've had a chance to review it? 6 A. I have. 7 Q. You'll see this is an e-mail from 8 Richard Haworth dated August 26 to you and 9 others at Barclays, do you see that? 10 A. Yes. 11 Q. And the subject line is "BarCap Exco"? 12 A. Yes. 13 Q. What is "Exco" a reference to? 14 A. Barclays Capital Executive Committee. 15 Q. Are you a member of that committee? 16 A. I am a member of the committee or an 17 ex officio member of the committee. I'm not 18 sure the proper language. 19 Q. There are two bolded items that appear 20 in that e-mail. The first one is "JPMorgan - 21 new flow business" and the second item reads 22 "Long Island - Asset Management update," do you 23 see that? 24 A. Yes. 25 Q. And do you understand the "Long TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Island" to be a reference to Lehman Brothers? 3 A. Yes. 4 Q. And there's a discussion there about 5 Lazard and Lazard's views, do you see that? 6 A. Yes. 7 Q. Do you have any recollection of any 8 discussions with Lazard as early as August of 9 2008 about Lehman Brothers? 10 A. I was not involved in any discussions 11 with Lazard. 12 Q. Other than what you see in this 13 e-mail, are you aware of discussions that others 14 at Barclays were having with Lazard about Lehman 15 prior to the September 12th date? 16 A. No. No. 17 Q. And do you have any understanding of 18 what role Lazard was playing prior to September 19 12th in connection with Lehman? 20 A. No. No knowledge. 21 (Exhibit 414B, a document bearing 22 Bates Nos. BCI-EX-115878 through 115879, 23 marked for identification, as of this date.) 24 Q. Sir, I have placed before you two 25 pages of handwritten notes marked Exhibit 414B. TSG Reporting - Worldwide (877) 702-9580</p>
Page 32	Page 33
<p>1 HIGHLY CONFIDENTIAL - A. COX 2 I'll give you a chance to review these notes, 3 but is that your handwriting on these notes? 4 A. Yes, it is, such as it is. 5 Q. Take a moment to review those two 6 pages. Let me know when you're done and I'll 7 ask you some questions about the notes. 8 A. All right. 9 Q. Having reviewed those two notes, can 10 you help place those notes in the process 11 between the 12th and 22nd? When do you believe 12 you made those notes? 13 A. I don't know for sure. 14 Q. There's a reference to -- I believe 15 you have written "Harvey" at the top right-hand 16 side of this page? 17 A. Yes. 18 Q. Do you recognize that as reference to 19 Harvey Miller? 20 A. I would assume so. 21 Q. And there's a reference to "DIP, 500 22 mill," do you see that? 23 A. Yes. 24 Q. Is it safe to assume that this is a 25 set of notes prepared on and after the TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 bankruptcy filing of Lehman Brothers? 3 MR. STERN: Objection to the form. 4 You're asking him to infer that? 5 MR. TAMBE: Yes. 6 MR. STERN: Okay. 7 A. No, I don't think that's a safe 8 assumption. 9 Q. Any reason to believe that these were 10 notes you prepared before the bankruptcy filing? 11 A. Yes. 12 Q. And what in particular about these 13 notes? 14 A. The reference to Fuld having talked to 15 Schumer, Hillary and Bloomberg leads me to 16 believe, but not -- but I don't know, that these 17 were made during the weekend of the 13th/14th. 18 Q. Just going through your handwritten 19 notations, the second line from the top which 20 begins with the number 75 percent, you see that? 21 A. Yes. 22 Q. If you just help decipher what you 23 have written there? 24 A. Because you can't read it or 25 because -- TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - A. COX  
2 Q. Because I can't read it and it's in  
3 script.  
4 A. "75 percent of 200 employees," and  
5 then I put in "70 percent signed up before  
6 closing. Want two-thirds." Is that clear?  
7 Q. Yes. This collection of points, each  
8 with a dash, can you help us understand what  
9 this is? Are these your negotiating points?  
10 Are these discussion points? What are they?  
11 A. They're a combination of notes to  
12 myself of things that we needed to cover in --  
13 as -- in negotiation.  
14 Q. About five bullet points down, there's  
15 a line that begins "portfolio," do you see that?  
16 A. I do.  
17 Q. If I'm reading that correctly, it  
18 states, "Portfolio: Purchase price adjustment  
19 or not?" And then you have typewritten word  
20 "no," do you see that?  
21 A. Yes.  
22 Q. What was the reference to "purchase  
23 price adjustment"?  
24 A. I don't remember exactly now.  
25 Q. The next item below that, if I'm  
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1 HIGHLY CONFIDENTIAL - A. COX  
2 Lehman people.  
3 Q. The next page of the exhibit, I'm  
4 going to need your help to decipher what you've  
5 written there. I get the first word, "Rich,"  
6 but I'm not sure I follow the rest of what you  
7 say.  
8 A. "Senior guy in IB. Retention top 200  
9 guys. Lock them. 2. Europe and Asia important  
10 to them. 3. Hearing pitch. Private equity  
11 firm called. People unsettled, being  
12 recruited."  
13 (Exhibit 415B, a document bearing  
14 Bates Nos. BCI-EX-115964 through 115972,  
15 marked for identification, as of this date.)  
16 Q. Sir, I've handed you a document marked  
17 Exhibit 415B. It's a set of handwritten notes.  
18 A. Yes.  
19 Q. If you could first flip through the  
20 notes and confirm that this is your handwriting  
21 that appears in the notes?  
22 A. Looks like it.  
23 Q. And there are some dates that appear  
24 on some of the pages. The first page has a date  
25 of September 12, '08, and further down I see  
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1 HIGHLY CONFIDENTIAL - A. COX  
2 reading that correctly, it reads "deal  
3 protection"; is that right?  
4 A. Yes.  
5 Q. What did you mean by that?  
6 A. Should we have some form of protection  
7 in the deal in some form in case it didn't go  
8 forward.  
9 Q. You mean along the lines of a breakup  
10 fee?  
11 A. Yes.  
12 Q. Do you recall having any discussion  
13 about a breakup fee with Lehman?  
14 A. No.  
15 Q. You don't recall or there were no such  
16 discussions?  
17 A. I don't recall any such discussions.  
18 Q. As you go further down the page,  
19 there's a line that reads, "Bonus pool 'up to 2  
20 billion,'" do you see that?  
21 A. Yes.  
22 Q. Do you have any understanding as to  
23 where you got that information from, "up to 2  
24 billion"?  
25 A. It would have been in discussions with  
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1 HIGHLY CONFIDENTIAL - A. COX  
2 references to the 13th and the 14th.  
3 A. Yes.  
4 Q. Can you confirm that these notes all  
5 relate to the discussions over the weekend?  
6 A. I believe they do.  
7 Q. Drawing your attention to the first  
8 page to about the middle of the page, in the  
9 left-hand margin, there's a number 8:29 written.  
10 If you cut across there, I want to draw your  
11 attention to what you have written, "They think  
12 reasonably marked." Do you see that?  
13 A. Yes.  
14 Q. Do you have any understanding as to  
15 what you meant by that?  
16 A. That would be a reference to how they  
17 had -- how they, Lehman, thought that they had  
18 reasonably marked things.  
19 Q. Your next line right below that reads,  
20 "Risk - 1 billion," do you see that?  
21 A. Yes.  
22 Q. And what is your understanding of what  
23 you meant by that?  
24 A. That if they were wrong, there was a  
25 downside exposure of about a billion dollars.  
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1           HIGHLY CONFIDENTIAL - A. COX  
2       Q.   And the third line right below that, I  
3   believe it reads "to sell." If you could help  
4   me decipher what that line is?  
5       A.   "To sell, marks down 10 or 15  
6   percent." If you went to sell them, you'd have  
7   to mark them down probably 10 to 15 percent,  
8   which gets back to the type of market  
9   environment we were in at the time.  
10      Q.   Do you know whether Barclays used a 10  
11   to 15 percent markdown range to mark down the  
12   assets acquired from Lehman?  
13      A.   No, but I believe these -- this  
14   reference only refers to private equity, as  
15   headed above where you started reading.  
16      Q.   If you turn the page to the next page,  
17   there's some names that appear at the top of the  
18   page. Do you -- can you decipher those names?  
19   There's about five names that appear there,  
20   written up there.  
21      A.   I'm sorry, but I only see three names.  
22      Q.   Okay.  
23      A.   Maybe we're looking at different  
24   pages.  
25      Q.   No, we're looking at the same page.  
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1           HIGHLY CONFIDENTIAL - A. COX  
2   certain of that.  
3       Q.   The next line below that reads, if I  
4   am reading it correctly, "Admitted do very  
5   little risk management." Do you see that?  
6       A.   Uh-huh.  
7       Q.   Do you know what that's a reference  
8   to?  
9       A.   No, I do not know. And I must say I'm  
10   not a hundred percent certain of my presumption  
11   as to who the individuals referred to above  
12   were. They may have been Lehman people.  
13      Q.   I've handed you, sir, a document that  
14   was previously marked Exhibit 378, and it's a  
15   cover e-mail, a placeholder page, and then a  
16   PowerPoint presentation. If you could take a  
17   moment just to flip through it and let me know  
18   when you're done.  
19      (Document review.)  
20      MR. STERN: There's a lot of material  
21   here, Jay. I'm just wondering if you want  
22   to ask Mr. Cox if he knows what it is or if  
23   he's ever seen it.  
24      MR. TAMBE: That's why I've asked him  
25   just to review. That will be my first  
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1           HIGHLY CONFIDENTIAL - A. COX  
2   965, the last three numbers?  
3       A.   Yeah, Jerry, Michael and Ashay.  
4       Q.   And then over to the right?  
5       A.   "Equities, Prime Services."  
6       Q.   Do you know what that's a reference  
7   to? Who are those people?  
8       A.   I think Jerry -- I do not remember  
9   whether exactly which Jerry that refers to.  
10      Q.   Are you identifying people at Lehman  
11   or are you identifying people at Barclays? Can  
12   you tell?  
13      A.   With the "Jerry" reference, I'm not  
14   certain.  
15      Q.   How about Michael?  
16      A.   I think, I think they're -- Michael is  
17   probably Michael -- I presume would be Michael  
18   Klein.  
19      Q.   And is it Ashay?  
20      A.   Ashay.  
21      Q.   Who is that?  
22      A.   I believe that he was in Prime  
23   Services.  
24      Q.   At?  
25      A.   I believe at Barclays. I'm not  
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1           HIGHLY CONFIDENTIAL - A. COX  
2   question, if he's ever seen it before.  
3       MR. STERN: If you're going to ask him  
4   specific questions, maybe you can point him  
5   to sections.  
6       MR. TAMBE: That is exactly what I'm  
7   going to do.  
8       MR. STERN: Okay. I think you should  
9   read through the executive summary and that  
10   may remind you if you've ever seen it.  
11      THE WITNESS: Okay.  
12      (Document review.)  
13      A.   All right.  
14      Q.   The attachment to the cover e-mail,  
15   which is the PowerPoint presentation that's  
16   titled "Project Long Island, Board Discussion  
17   Material, 16 September 2008"?  
18      A.   Yes.  
19      Q.   Is that a document you've seen before  
20   today?  
21      A.   No.  
22      Q.   I believe you took a look at the  
23   executive summary that appears on page 2 of that  
24   deck, correct?  
25      A.   Yes.  
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1           HIGHLY CONFIDENTIAL - A. COX  
2       Q. Is that describing the transaction  
3 that was negotiated on the 15th and 16th of  
4 September, 2008?  
5       MR. STERN: Objection to the form.  
6       A. I would have to compare it with the --  
7 with the actual -- with what we actually -- the  
8 actual document, but in -- in major substance,  
9 it looks like, it certainly would appear that it  
10 captures the major items.  
11       Q. About a third of the way down the  
12 page, the Executive Summary page, page 2,  
13 there's a arrow which begins, "We would offer  
14 \$250 million," do you see that?  
15       A. Yes.  
16       Q. The end of that bullet, that arrow,  
17 there's a sentence that reads, "The recognition  
18 of negative goodwill amounts to \$3 billion  
19 pretax (2 billion post-tax)," do you see that?  
20       A. I do.  
21       Q. Was that your understanding of the  
22 negative goodwill that would be generated by the  
23 transaction that you negotiated on the 15th and  
24 16th of September?  
25       A. I never fully understood the  
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1           HIGHLY CONFIDENTIAL - A. COX  
2 team who was charged with calculating the  
3 regulatory capital requirements of the  
4 transaction that was being negotiated?  
5       A. Those would have been calculated in  
6 London.  
7       Q. At any time did anyone from within  
8 Barclays convey to you any target regulatory  
9 capital ratios or requirements in connection  
10 with this transaction?  
11       A. Not that I recall.  
12       Q. Did you have any discussions with  
13 anyone at Barclays about raising new capital to  
14 support the capital requirements implicated by  
15 this transaction?  
16       A. Yes. Yes, I mean, I knew -- we knew  
17 we would have to raise -- you mean did I know we  
18 would have to raise additional capital?  
19       Q. Yes.  
20       A. Yes.  
21       Q. Do you know how much additional  
22 capital you would have to raise?  
23       A. I don't recall the specific amount  
24 now.  
25       Q. Did you have an understanding that the  
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1           HIGHLY CONFIDENTIAL - A. COX  
2 calculation of negative goodwill. The  
3 accounting, arcane accounting in the UK is  
4 somewhat foreign to me. So the answer is I -- I  
5 know there was some negative goodwill that might  
6 be created, but I don't know other than that.  
7 I'm not very familiar with it.  
8       Q. Did you have any discussions with  
9 anyone within Barclays about the negative  
10 goodwill that would be generated by the  
11 transaction that you were negotiating?  
12       A. Not really, no. No.  
13       Q. Did you have any discussions with  
14 anyone at Barclays about the regulatory capital  
15 requirements that would be imposed on Barclays  
16 as a result of the transaction that you were  
17 negotiating?  
18       A. No, I did not have discussions about  
19 that.  
20       Q. But you did understand that there were  
21 regulatory capital implications of the  
22 transaction you were doing?  
23       A. I understand there are regulatory  
24 capital implications to anything we do.  
25       Q. Was there someone on the negotiating  
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1           HIGHLY CONFIDENTIAL - A. COX  
2 transaction itself was going to generate some  
3 capital to satisfy the regulatory capital  
4 requirements?  
5       A. I certainly hoped that it would not --  
6 that it would not generate a capital,  
7 significant capital charge.  
8       Q. So you certainly hoped that you  
9 wouldn't have to go out and raise a lot of  
10 additional capital?  
11       A. Yeah, we knew we would have to raise  
12 some additional capital.  
13       Q. But your hope was you wouldn't have to  
14 raise a significant amount of additional  
15 capital?  
16       A. Well, I think we raised a significant  
17 amount. So we're talking about -- we're talking  
18 about differences of significant amounts -- in  
19 significant amounts.  
20       Q. About how much did you raise in new  
21 capital to support the transaction, the Lehman  
22 transaction?  
23       A. I honestly don't remember.  
24       Q. About a billion?  
25       MR. STERN: Objection to the form.  
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. I just said I don't remember. 3 Q. Even orders of magnitude, whether it's 4 one billion or ten billion? 5 A. I just said I don't remember. 6 Q. Who would have been charged with 7 identifying the amount of new capital to raise? 8 A. It would have been done in London. 9 Q. As you look further down the Executive 10 Summary, there's an arrow that reads, "We 11 extract 'clean' assets and contracts out of Long 12 Island," do you see that? 13 A. Yes. 14 Q. Was it your understanding that the 15 negotiations that you were involved in involved 16 the extraction of clean assets out of Lehman 17 Brothers? 18 MR. STERN: Objection to the form. 19 A. I don't believe that we -- I do not 20 recall using the word "clean" or hearing the 21 word "clean assets" in any negotiations we had. 22 Q. The bullet point that's right above 23 the negative goodwill point that we were 24 discussing reads, "We would acquire 75 billion 25 of assets and liabilities." Do you see that? TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. Yes. 3 Q. Do you know where that valuation comes 4 from? 5 A. Could you -- I'm not sure I fully 6 understand your question. 7 Q. Do you have any understanding of where 8 the \$75 billion number would have been derived 9 from to insert in this board presentation? 10 A. I do not know exactly how that number 11 was arrived at. 12 Q. Was there someone in the negotiating 13 team that was negotiating with Lehman that was 14 responsible for passing those numbers up to the 15 board for board consideration? 16 A. I just said I do not know how -- I do 17 not know how the \$75 billion number was arrived 18 at. 19 Q. There's a reference in that same 20 sentence to the following, "The business would 21 include RWA of 13.5 billion." Do you see that? 22 A. Yes. 23 Q. Do you have an understanding as to 24 what that means? 25 A. "RWA" usually means risk-weighted TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 assets. 3 Q. Do you know how that number, the 4 risk-weighted asset number of 13.5 billion, what 5 the relationship is between that number and the 6 \$75 billion number in that line? 7 A. There would be a calculation that 8 would be made of various buckets that the assets 9 would fall into and with the appropriate risk 10 weightings, and the aggregate I presume would be 11 13.5 billion. 12 Q. For what purpose would Barclays be 13 doing an RWA calculation of these assets? 14 MR. STERN: Objection to -- 15 Q. Is it to determine regulatory capital 16 requirements? 17 MR. STERN: Objection to the form. 18 A. Risk-weighted assets is a number that 19 we're always very conscious of, the aggregate 20 amount of our risk-weighted assets. 21 Q. And are your regulatory capital 22 requirements driven off of your RWA numbers? 23 A. It is a factor. It's also a factor in 24 what investors look at. 25 Q. If you turn to page 5 of the deck, you TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 will see a chart for a spreadsheet on that page, 3 do you see that? 4 A. Yes. 5 Q. Have you ever seen that -- 6 A. No. 7 Q. -- collection of information before 8 today? 9 A. No. 10 (Exhibit 416B, a document bearing 11 Bates Nos. BCI-EX-116023 through 116030, 12 marked for identification, as of this date.) 13 Q. I handed you a document marked 416B. 14 If you could take a moment to review the 15 document and let me know when you're done. 16 (Document review.) 17 A. Yes. 18 Q. There's some handwriting that appears 19 on page 2 of Exhibit 416B. That's yours? 20 A. I only -- I see no handwriting on page 21 2. 22 Q. It's the second page of the exhibit. 23 It's page 1, page numbered 1 of the exhibit. 24 A. That is my handwriting, yes. 25 Q. What is this deck, Exhibit 416B? TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       A. It's a deck that I received a copy of 3       from -- that was prepared by Lehman Brothers. 4       Q. There's a reference to Project Green 5       on the front page, do you see that? 6       A. I do. 7       Q. Does that have any meaning to you? 8       A. None. 9       Q. I handed you a two-page document 10       marked Exhibit 330. Please take a moment to 11       look at it. Let me know when you're done. 12       (Document review.) 13       A. All right. 14       Q. There's a reference in the e-mail in 15       the middle of the first page, it's an e-mail 16       from John Varley to Bob Diamond, to the 17       following, "Cox has telephoned McCarthy," do you 18       see that? 19       A. I do. 20       Q. Do you know what that's a reference 21       to? 22       A. I have no idea. I don't believe it 23       refers to me. 24       (Exhibit 417B, a document bearing 25       Bates Nos. BCI-EX-115898 through 115900, TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       marked for identification, as of this date.) 3       Q. I've handed you a three-page document 4       marked 417B. Take moment to review all three 5       pages. Let me know when you're done. 6       (Document review.) 7       A. All right. 8       Q. There's various handwriting on all 9       three pages. Some of the handwriting is yours, 10       correct? 11       A. Some of it is mine. On two of the 12       pages, some of it's mine. 13       Q. On the middle page the handwriting 14       that appears, that's not your handwriting at 15       all, correct? 16       A. That's correct. 17       Q. So, putting aside that handwriting, 18       which also shows up on the first page, the 19       handwriting on the right-hand side of the page 20       on the first page? 21       A. Yes. 22       Q. If you could help us understand what 23       you have written there? 24       A. I can read it to you. 25       Q. Yes, if you could, and then I'll ask TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       you some follow-up questions about it. 3       A. "We need these contracts. No one 4       knows where the 800 million came from. The 200 5       million is for more than 3,000 contracts. 6       Mission critical." And then, "How big will this 7       number be? 200 million estimated for more than 8       3,000 contracts. Martin Kelly, Lehman 9       Brothers." 10       Q. And having read those notes, can you 11       help us understand what those notes are 12       referring to? 13       A. They refer to the contracts that 14       Lehman had that we might have to -- that we 15       would either assume, or some of which we had -- 16       we hadn't decided which ones we were going to 17       assume and what the cure payments might be for 18       the contracts. 19       Q. And the \$200 million figure, was that 20       the cure figure for the 3,000 mission -- the 21       greater than 3,000 mission critical contracts? 22       A. I don't remember specifically, but 23       I -- I believe that's what the number refers to. 24       Q. And was that a number that was 25       conveyed to you by Mr. Kelly during that week of TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       the 15th? 3       A. I do not remember specifically. 4       Q. Do you see the typewritten information 5       on page 1 of Exhibit 417B has a line that reads, 6       "Cure PMT," payment; do you see that? 7       A. Yes. 8       Q. There's a \$2.25 billion number there? 9       A. Yes. 10       Q. Do you have any understanding where 11       that \$2.25 billion number was derived from? 12       A. I believe that was a number given to 13       us by Lehman, their estimate of what the cure 14       payments would be. 15       Q. Did Barclays have its own estimate of 16       what the cure payments would be? 17       A. We couldn't. We didn't have time 18       to -- we didn't have time to review all the 19       contracts. 20       Q. Was there someone on the negotiating 21       team who was charged with trying to estimate 22       that cure payment number for Barclays? 23       A. Not specifically that I remember. 24       Q. Do you know ultimately how much 25       Barclays has paid in cure payments? TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - A. COX  
2 A. I do not know.  
3 Q. There's a reference to the 800  
4 million, the \$800 million in your handwritten  
5 notes, do you see that?  
6 A. Yes.  
7 Q. Do you know what that's a reference  
8 to?  
9 A. No.  
10 Q. The typewritten version, the  
11 typewritten information that appears on this  
12 document, do you know what that is?  
13 A. That was, at that particular point in  
14 time that it was put together, was the -- was  
15 the list of assets and liabilities that Barclays  
16 would be assuming. Taking on, assuming, however  
17 you want to ...  
18 Q. In the "Assets" column, at the bottom  
19 of the "Assets" column, there's a typewritten  
20 entry, "80J, adjusted total assets, 72.65," do  
21 you see that?  
22 A. Yes.  
23 Q. Do you know how that number was  
24 derived?  
25 A. That's -- I guess that was the sum of  
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1 HIGHLY CONFIDENTIAL - A. COX  
2 were involved in reaching that good faith  
3 agreement as to what the marks should be?  
4 A. I do not know -- well, I do not know  
5 specifically all the people who would have been  
6 involved because there would have been a large  
7 number of people involved given all the  
8 different categories of securities.  
9 Q. Do you know who would have led that  
10 effort from the Barclays side?  
11 A. Certainly Stephen King was involved  
12 and Michael -- I always get his name --  
13 MR. STERN: Keegan.  
14 A. Keegan was getting involved.  
15 I always say Keating. Keegan was  
16 involved.  
17 Q. Do you know any of the people involved  
18 on the Lehman side in that process?  
19 A. I'm going to go blank on a name again.  
20 Alex, their head of fixed income would  
21 have been involved.  
22 Q. Alex Kirk?  
23 A. Yeah, Alex Kirk would have been  
24 involved.  
25 Q. Do you have any --  
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1 HIGHLY CONFIDENTIAL - A. COX  
2 the total of the two items, two separate  
3 categories above.  
4 Q. Do you know whether that number  
5 reflected any markdown of asset values?  
6 A. I assume that that number reflected --  
7 I do not -- I assume that number reflected the  
8 marks that were agreed to between the two  
9 parties.  
10 Q. And that's the process you had  
11 referred to before?  
12 A. Yes.  
13 Q. Do you know whether that number is the  
14 same number at which those assets were carried  
15 on Lehman's books on or about September 16,  
16 2008?  
17 A. I do not know exactly. I do not know  
18 what the difference was and I do not know,  
19 therefore, if it was the same number or not. I  
20 do know that some of their marks were higher  
21 than ours, some of their marks would have been  
22 lower than ours. I think there was a good faith  
23 agreement between the parties what the marks  
24 should be.  
25 Q. Do you know any of the individuals who  
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1 HIGHLY CONFIDENTIAL - A. COX  
2 A. And presumably a bunch of other people  
3 as well, because these are all different trading  
4 books.  
5 Q. Do you have any idea as to  
6 mechanically how the marking was done? Was it  
7 done cusip-by-cusip, was it done by asset  
8 category, or some other method?  
9 A. I do not know.  
10 Q. Continuing down --  
11 A. I will say in all of the marking and  
12 in all of the discussions between the parties on  
13 the assets and liabilities, there was always a  
14 really good faith effort to come up with numbers  
15 that were fair to both parties. That was the  
16 principle that we followed throughout the entire  
17 negotiation.  
18 Q. If you look at the handwritten notes  
19 that appear, you know, below the "Martin Kelly  
20 LEH" entry you have written the number 1.5 and  
21 then below that 1.35 bill, billion, number. I  
22 can't decipher the rest of that phrase. If you  
23 could just read that.  
24 A. Number Rich came up with may be  
25 questionable.  
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<p>1           HIGHLY CONFIDENTIAL - A. COX</p> <p>2       Q.   What's that a reference to?</p> <p>3       A.   Both of the notes on this page or all</p> <p>4       the notes on this page relate to questions I had</p> <p>5       about the cure payment and the compensation</p> <p>6       liability pool that we were assuming, in that I</p> <p>7       wanted to make sure that we were not overstating</p> <p>8       or understating the numbers.</p> <p>9       The notes you have specifically</p> <p>10      referred to came about as a result of looking at</p> <p>11      the 2 billion accrual number that we had for the</p> <p>12      comp -- potential liability number that we had</p> <p>13      for the comp, compensation, and I do not -- my</p> <p>14      notes are not full. I do not remember exactly</p> <p>15      what the 1.35 billion was, whether that referred</p> <p>16      to just the U.S. entity or whether it referred</p> <p>17      to what they had accrued on their books so far</p> <p>18      for cash payments but excluding their</p> <p>19      compensation paid in stock.</p> <p>20      I do not remember. I think what I was</p> <p>21      satisfied with was that the 2 billion number was</p> <p>22      as accurate a number as we could come up with.</p> <p>23      Q.   When you say "as accurate a number as</p> <p>24      you could come up with," was that \$2 billion</p> <p>25      number a number that Barclays was generating an</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX</p> <p>2       estimate of?</p> <p>3       A.   No. No. No. Working with Lehman.</p> <p>4       Because obviously they had accrued numbers on</p> <p>5       their books. They had some facts we didn't</p> <p>6       have.</p> <p>7       Q.   So your belief is that the \$2 billion</p> <p>8       number was the number accrued on Lehman's books?</p> <p>9       MR. STERN: Objection to the form.</p> <p>10      A.   I did not say that.</p> <p>11      Q.   That's what I'm trying to understand.</p> <p>12      A.   That's not what I said. I said</p> <p>13      they -- we had to do it with them. They had</p> <p>14      some numbers that were accrued on their books.</p> <p>15      They had -- they knew what they were going --</p> <p>16      they knew what approximately their liability</p> <p>17      would be for the year that they thought they had</p> <p>18      to pay. We obviously had to be working with</p> <p>19      Lehman to come up with a number that was arrived</p> <p>20      at.</p> <p>21      Q.   Do you know whether 2 billion was the</p> <p>22      number that Lehman had accrued on its books?</p> <p>23      A.   Well, first of all, I don't believe</p> <p>24      that it was because the 2 billion number applied</p> <p>25      to a year and they would only have accrued for</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - A. COX</p> <p>2       through the end of August, so for only for</p> <p>3       two-thirds of the year.</p> <p>4       So it's highly unlikely that they</p> <p>5       would have had a full year's accrual in eight</p> <p>6       months given the environment in which we were</p> <p>7       operating. Secondly, I don't know that they</p> <p>8       accrued for the stock portion of their</p> <p>9       compensation. They may have only been accruing</p> <p>10      for the cash portion of their compensation.</p> <p>11      So I would think it highly unlikely</p> <p>12      that the 2 billion number was accrued on their</p> <p>13      books at that time.</p> <p>14      Q.   Did you ever see any calculations from</p> <p>15      Lehman of their accruals?</p> <p>16      A.   Did I ever see their actual books and</p> <p>17      records that showed that number?</p> <p>18      Q.   Yes.</p> <p>19      A.   No. What their accrual was, no.</p> <p>20      Q.   The 1.35 billion number Rich came up</p> <p>21      with, what's that a reference to?</p> <p>22      A.   Rich Ricci had -- the 1.35 billion is</p> <p>23      the number that Rich gave me.</p> <p>24      Q.   You said "may be questionable." Is</p> <p>25      that Rich's number that will be questionable or</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX</p> <p>2       the \$2 billion number would be questionable?</p> <p>3       A.   The 1.35 billion.</p> <p>4       Q.   Did you ask Rich Ricci questions about</p> <p>5       how he came up with that number?</p> <p>6       A.   Yes. We asked -- we asked a lot of</p> <p>7       questions about this. That's why I say when we</p> <p>8       ended up with the \$2 billion number, that was</p> <p>9       the number that we felt was the correct number.</p> <p>10      Q.   Do you know the amount of the comp</p> <p>11      payments that Barclays has made under the</p> <p>12      contract, under the Asset Purchase Agreement?</p> <p>13      A.   I don't know the exact number, but my</p> <p>14      understanding is it's somewhere in that area of</p> <p>15      2 billion.</p> <p>16      Q.   How do you have that understanding?</p> <p>17      A.   From what I've been told.</p> <p>18      Q.   By counsel?</p> <p>19      A.   No. Internally.</p> <p>20      Q.   By whom?</p> <p>21      A.   I don't recall.</p> <p>22      Q.   If you look at the last page of this</p> <p>23      exhibit, 417B, I believe that's your handwriting</p> <p>24      on the right-hand side, correct?</p> <p>25      A.   I think we've covered that.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       Q. So next to the word "cure payment" in 3       the amount 2.25, you have written, "How big will 4       this number be? Is Lehman expecting this? 5       Creditors." Do you see that? 6       A. Yes. 7       Q. What's your reference to creditors 8       there? 9       A. It's are the creditors expecting a 10      number this big. 11      Q. Are these questions that you posed to 12      Lehman? 13      A. They're questions that I asked of 14      myself. I would -- I do not remember 15      specifically asking people, others, but logical 16      to assume I did. 17      MR. TAMBE: Let's just take a short 18      break. 19      (Recess; Time Noted: 11:36 A.M.) 20      (Time Noted: 11:49 A.M.) 21      (Exhibit 418B, a document bearing 22      Bates Nos. BCI-EX-79546, marked for 23      identification, as of this date.) 24      BY MR. TAMBE: 25      Q. Sir, I have placed before you a TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       document marked 418B. Please take a moment to 3       review it. Let me know when you're done. 4       A. Okay. 5       Q. This is an e-mail chain that begins 6       with an e-mail from you to Bob Diamond and 7       others, do you see that? 8       A. Yes. 9       Q. And you're describing an interaction 10      that you have with Bart McDade, correct? 11      A. Yes. 12      Q. And that was on the 16th of September? 13      A. The e-mail was on the 16th of 14      September. 15      Q. Okay. 16      A. From me, yes. 17      Q. And your interaction with Bart, was 18      that on the 16th or earlier, the one you 19      described? 20      A. I do not know. I do not know. It 21      might well have been the day before. 22      Q. And when you say, "I guess that means 23      he has signed on," what did you mean? 24      A. I guess my question is what -- what 25      don't you understand? I guess that means he TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       signed on. 3       Q. To join Barclays? 4       A. Yes. 5       Q. Were there others like Bart McDade who 6       had sort of shaken your hand and signed on prior 7       to the closing of the transaction? 8       A. Bart McDade is the only one I shook 9       hands with. 10      Q. Are there others who signed on before 11      the closing of the transaction? 12      A. I believe there were a number of 13      others that signed on. 14      Q. Do you know any of the others who 15      signed on prior to the closing of the 16      transaction? 17      A. I guess I don't know the exact timing 18      of when people signed on and when they didn't. 19      Q. You talked earlier about the process 20      by which values were agreed to between Lehman 21      and Barclays, do you remember that? 22      A. Yes. 23      Q. You said that people tried to come up 24      with fair values, correct? 25      A. Yes. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       Q. And you wanted those values to be fair 3       both for Lehman and for Barclays, correct? 4       A. Yes. 5       Q. Who do you believe was making sure 6       that the values were fair to Lehman? 7       A. Alex Kirk and his -- presumably his 8       people in fixed income. 9       Q. And do you know whether Mr. McDade 10      played any role in making sure the transaction 11      was fair to Lehman? 12      A. No, I would have thought -- well, in 13      terms of the values on fixed income, I don't 14      believe he was involved at all. 15      Q. How about the overall transaction? 16      A. He was involved in various parts of 17      it. 18      Q. And continued to be involved in 19      various parts of it on and after the 16th, 20      correct? 21      A. Correct, although not the lead 22      negotiator. 23      Q. Who would you consider to be the lead 24      negotiator for Lehman? 25      A. Mark Shafir. TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Q. Do you know when Mark Shafir left the 3 process? He exited the process at some point, 4 do you remember? 5 A. It was, to the best of my 6 recollection, it was towards the end of the 7 week. 8 Q. Before the hearing on Friday, correct? 9 A. I don't remember exactly. 10 Q. Do you know why he left the process? 11 A. He decided to join another firm. 12 Q. Citibank? 13 A. I didn't know that at the time. 14 Q. And once he left the process, you had 15 no further dealings with him with respect to the 16 Lehman transaction, correct? 17 A. Correct. 18 Q. Who took his place? 19 A. Mark Shapiro I believe largely took 20 his place. 21 (Exhibit 419B, a document bearing 22 Bates Nos. BCI-EX-79067, marked for 23 identification, as of this date.) 24 Q. Sir, I handed you a document marked 25 419B. Please take a moment to review it and let TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 me know when you're done. 3 (Document review.) 4 A. Yes. 5 Q. Do you recall seeing this e-mail 6 before today? 7 A. Do I recall seeing it? No. 8 Q. The e-mail from John Mahon to you and 9 others has a subject line of "potential 10 problem," do you see that? 11 A. Yes. 12 Q. Do you recall discussing any of these 13 issues with John Mahon or others at Barclays on 14 about the date of this e-mail? 15 A. I had no discussions with John Mahon. 16 Q. Do you know who he is? 17 A. No. 18 Q. Do you recall having discussions with 19 anyone at Barclays on or about the date of this 20 e-mail, Wednesday, September 17, about the 21 topics that are discussed in this e-mail? 22 A. No. I knew the topics were being 23 discussed, but I wasn't involved in the 24 discussions. 25 Q. I've handed you what has been TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 previously marked as Exhibit 285B. Please take 3 a moment and review it and let me know when 4 you're done. 5 (Document review.) 6 A. Yes. 7 Q. We had earlier discussed the \$2 8 billion item on the 9/16 balance sheet, do you 9 recall that discussion? 10 A. Yes. 11 Q. And in the top e-mail in Exhibit 285B, 12 Rich Ricci has written to Patrick Clackson, 13 Michael Evans, with a copy to you about that 14 accrual, correct, that \$2 billion number? 15 A. Yes. 16 Q. And he says, "Never agreed to it. 17 Archie, this is the problem. We can't have this 18 clause, I don't think." Do you see that? 19 A. Yes. 20 Q. Agreeing to the \$2 billion, was that 21 something that you were involved in doing, sir? 22 A. I was certainly involved in 23 discussions about the 2 billion. I don't 24 remember exactly who agreed to it, as you put 25 it. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Q. If you'll look in the e-mail below 3 from Patrick Clackson to Michael Evans and Rich 4 Ricci, he states in the middle of his 5 introductory line, "I was relying on you guys 6 telling me I needed 1.35 billion, which gave me 7 650 million of the goodwill." Do you see that? 8 A. Yes. 9 Q. Do you know what that's a reference 10 to? 11 A. I know what it says, that he thought 12 that the bonus amount paid out -- to be paid out 13 would be only 1.35 billion. 14 Q. Against the 2 billion set forth in the 15 agreement? 16 A. Yes. 17 Q. Which would then yield a negative 18 goodwill or a goodwill number of 650 million, 19 correct? 20 A. The difference, I assume, yes. 21 Q. Do you know how Mr. Clackson would 22 have gotten that understanding? 23 A. I do not know how he got it, no. 24 Q. And what's his position at Barclays? 25 A. He is in the Finance Department. TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Q. What's his title or position? 3 A. Managing director, I -- 4 Q. At the beginning of the deposition we 5 talked about some issue or development 6 concerning JPMorgan Chase, do you remember that? 7 A. Yes. 8 Q. Can you give me some more detail on 9 what the issue was concerning JPMorgan Chase 10 that arose later on during the week of the 15th? 11 A. I could only give it to you generally, 12 not specifically. 13 Q. Is it fair to say that's something 14 you're aware of but that you were not personally 15 involved in addressing? 16 A. That is correct. 17 Q. Do you know who within Barclays was -- 18 A. Although, having said that, I was 19 involved in one or two meetings with JPMorgan 20 just prior to the -- over the weekend before the 21 Asset Purchase Agreement was -- the deal was 22 closed. 23 Q. Describe for me the nature of the 24 issue or the problem and the meeting that you 25 attended. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. Well, I think there was more than one 3 problem. There was a problem, as I remember it, 4 and others would have more specific knowledge 5 than I, there was a problem of that when we 6 stepped into the tripartite agreement with the 7 Fed, not all the securities that we thought were 8 part of that agreement turned out to be part of 9 it. It's not clear to me whether JPMorgan 10 substituted some securities or simply withheld 11 them. And there was another problem relating to 12 7 billion of cash and securities that we thought 13 we had that JPMorgan at one point pulled back 14 and which I think is still not finally settled 15 in -- in all its detail. 16 You know, you have to -- it seems like 17 a simple transaction to acquire X amount of 18 assets and assume Y amount of liabilities, the 19 same amount of liabilities, but in fact it was a 20 very complicated transaction due to the 21 involvement of JPMorgan Chase, the Fed, 22 securities being pledged, Lehman's records being 23 somewhat not up to date, perhaps. 24 And there was a great deal of risk to 25 the transaction from Barclays' standpoint. We TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 we were dealing in markets that were never seen 3 before in history. So all of this was being 4 done in an environment that was extremely 5 difficult, and we, you know, people were doing 6 their best, but it wasn't always easy. 7 Q. So, coming back to the JPMorgan 8 problem, you said there were two aspects to it. 9 They may have substituted some collateral and 10 there was some \$7 billion in cash? 11 A. We didn't get some of the securities 12 we thought we were going to get, and in fact, we 13 didn't get the volume of securities that we 14 thought we were going to get, if I remember 15 correctly. 16 Q. In your prior answer you talked about 17 acquiring X amount of assets and Y amount of 18 liabilities? 19 A. The same amounts. 20 Q. The same amounts. Is that your 21 understanding of the transaction that Barclays 22 was doing, that it was acquiring basically the 23 same amount of assets and liabilities? 24 MR. STERN: Objection to the form. 25 A. With respect to assets and liabilities TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 we were taking on, in addition to that, we were 3 purchasing certain assets, and we were paying 4 250 million in excess of that. Purchasing the 5 three buildings. 6 Q. Putting the buildings aside, just 7 looking at securities, were you basically 8 purchasing those securities and paying 9 equivalent value for those securities? 10 MR. STERN: Objection to the form. 11 A. I'm not sure I follow your question. 12 Q. The question is were you acquiring 13 assets at less than the stated value of those 14 assets? 15 A. No. Stated value -- we were acquiring 16 assets at values that had been agreed to between 17 the two parties. If that's what you mean by 18 "stated values," yes. 19 Q. I handed you a two-page document, sir, 20 marked 149A. Take a moment to review it and 21 I'll ask you a couple of questions about it when 22 you're done. 23 (Document review.) 24 A. Yes. 25 Q. The top of the first page of this TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - A. COX  
2 exhibit there's an e-mail from Michael Klein to  
3 Bob Diamond, do you see that?

4 A. Yes.

5 Q. And Mr. Klein makes a reference to the  
6 following, he says, "We clawed back 3 billion  
7 more of value in the transaction," and it goes  
8 on.

9 Do you know what that's a reference  
10 to?

11 A. No.

12 Q. Were you aware of any efforts or  
13 attempts to clawback \$3 billion in value in the  
14 transaction?

15 MR. STERN: Objection to the form.

16 A. No. No.

17 Q. Were you aware of any efforts on  
18 Friday, the 19th, and continuing into the  
19 weekend of the 20th and 21st to identify  
20 additional assets to be transferred from Lehman  
21 to Barclays?

22 A. Not specifically, no.

23 Q. Generally?

24 A. No, I'm -- "no" is the answer to that.

25 The only reason I hesitate at all is there was

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1 HIGHLY CONFIDENTIAL - A. COX  
2 some questions about, and I don't remember  
3 whether the timing with assets at the DTCC that  
4 were tied up and the DTCC had to do -- they had  
5 to be released somehow, but I don't think that  
6 involved clawing back of any assets.

7 Q. Putting aside the DTCC assets and the  
8 issue regarding the DTCC assets, you're not  
9 aware of any other efforts to identify and  
10 transfer other assets to --

11 A. No.

12 Q. -- Barclays?

13 A. No.

14 Q. I handed you a two-page document  
15 marked Exhibit 275. Take a moment to review it.  
16 Let me know when you're done.

17 (Document review.)

18 A. Yes.

19 Q. You'll see, sir, this is an e-mail  
20 from Jasen Yang addressed to you, do you see  
21 that?

22 A. Uh-huh. Yes.

23 Q. Is this information or a document that  
24 you had asked Mr. Yang to provide you with?

25 A. No.

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1 HIGHLY CONFIDENTIAL - A. COX  
2 Q. Do you know what this document is,  
3 what information is contained on this document?

4 A. I don't recall having seen this  
5 document before, even though it's addressed to  
6 me. I'm assuming that the repo custodian has  
7 put some value, just as it says, has assigned  
8 some market values to the various assets that  
9 were in the Fed financing facility as collateral  
10 to the fed financing facility. Repo custodian I  
11 assume is the Bank of New York.

12 Q. Do you have an understanding that  
13 there were discussions within Barclays about the  
14 valuation of the collateral that had been  
15 transferred over as part of the Fed repo?

16 A. Yes.

17 Q. Were you involved in any way in those  
18 discussions?

19 A. No.

20 Q. I've handed you a document previously  
21 marked as 401A. If you could take a moment to  
22 review it and let me know when you're done.

23 (Document review.)

24 A. Yes.

25 Q. You're not shown as a recipient of the

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1 HIGHLY CONFIDENTIAL - A. COX  
2 cover e-mail. My question for you, turning your  
3 attention to the third page of the exhibit,  
4 Exhibit 401A, are you familiar with that form of  
5 document?

6 A. No.

7 Q. At any time after the closing of the  
8 Lehman transaction did anyone report to you the  
9 total value of the assets and liabilities, the  
10 net assets, and the negative goodwill generated  
11 by the transaction?

12 A. No, not to my knowledge.

13 Q. Were you involved at all in any  
14 discussions within Barclays about accounting for  
15 the transaction?

16 A. No. Very, very limited. Only on the  
17 periphery. I knew they were going on.

18 Q. In terms of your day-to-day  
19 responsibilities, do you have any responsibility  
20 for reviewing the regulatory disclosures that  
21 are made by Barclays about its accounts, about  
22 its financial statements?

23 A. No.

24 Q. You are aware that Barclays has  
25 reported a gain on the acquisition, are you not?

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1 HIGHLY CONFIDENTIAL - A. COX

2 A. Yes.

3 Q. Do you have an understanding as to the  
4 source of that gain?

5 A. Not specifically, no.

6 Q. Just generally what's your  
7 understanding of the source of that gain?

8 A. "I don't know" is the answer to the  
9 question. I can only speculate.

10 Q. The issues with JPMorgan, are you  
11 aware of any discussions that continued on into  
12 the fall in an effort to try and resolve those  
13 issues?

14 A. I know discussions continued. I'm not  
15 sure they have been entirely resolved even  
16 today.

17 Q. Did you play any role in those  
18 discussions as they continued?

19 A. No.

20 Q. Who at Barclays did?

21 A. Gerard LaRocca would be the person  
22 that I would think would have had most of them.

23 Q. Are you aware of, generally aware of a  
24 settlement agreement that was signed up sometime  
25 in December 2008?

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1 HIGHLY CONFIDENTIAL - A. COX

2 Diamond written in the early hours of Monday,  
3 September 22nd, right?

4 A. Yes.

5 Q. And you state, "We have an agreement"?

6 A. Yes.

7 Q. And you are referring to an agreement  
8 with JPM or with someone else?

9 A. I believe so.

10 Q. And what was the nature of the  
11 agreement that you had reached on the early  
12 hours of Monday, September 22?

13 A. It would have related to the releasing  
14 of collateral.

15 Q. And is it your understanding that that  
16 agreement ran into some difficulties or fell  
17 apart after the closing?

18 A. I believe it fell apart after 12:29  
19 A.M. and before 7 A.M.

20 Q. And the agreement you're referring to,  
21 that was not a signed document of any kind; is  
22 that right?

23 A. No.

24 Q. It was -- who were you discussing --

25 A. No. As I said, we hoped to have it

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1 HIGHLY CONFIDENTIAL - A. COX

2 A. As it relates to the Lehman  
3 transaction?

4 Q. As it relates to the Lehman  
5 transaction and JPMorgan and Barclays.

6 A. Yes, generally.

7 Q. And what is your understanding about  
8 that settlement agreement?

9 A. I believe a settlement was reached  
10 that included a settlement of the lawsuit that  
11 Barclays had in connection with the Bear Stearns  
12 transaction.

13 Q. Do you have any understanding as to  
14 any other aspects of that settlement?

15 A. No, except it was part of the  
16 settlement of the Lehman dispute, I believe.

17 (Exhibit 420B, a document bearing  
18 Bates Nos. BCI-EX-80849, marked for  
19 identification, as of this date.)

20 Q. I placed before you a document marked  
21 Exhibit 420B. Let me know when you're done  
22 reviewing it.

23 (Document review.)

24 A. Yes.

25 Q. This is an e-mail from you to Bob

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1 HIGHLY CONFIDENTIAL - A. COX

2 papered before the opening in New York.

3 Q. And that never happened before the  
4 opening in New York on the 22nd?

5 A. Well, there were some further  
6 discussions early in the morning -- sorry, later  
7 than 12:29 A.M., but before 7 A.M. in the  
8 morning.

9 Q. And what happened as a result of those  
10 discussions?

11 A. First, I think it turned out we didn't  
12 have an agreement. Then they agreed to -- then  
13 they -- we reached enough of an agreement that  
14 we felt comfortable signing, but still to us  
15 with tremendous risk. I mean, there was still  
16 significant, you know, billions of dollars  
17 outstanding that we were worried about.

18 Q. What did you do to prepare for this  
19 deposition, other than talk with counsel?

20 A. I gave him my file, which I looked  
21 through, and that's about all.

22 Q. Did you go back and review any e-mails  
23 or documents?

24 A. No.

25 Q. Have you reviewed any of the

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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       submissions that have been made by Lehman 3       Brothers in connection with the discovery that 4       we're conducting, these depositions that we're 5       conducting? 6       A.   I'm sorry. Again? 7       Q.   Let me restate that. Have you 8       reviewed any of the court filings made by Lehman 9       or Barclays -- 10      A.   No. 11      Q.   -- concerning this discovery? 12      A.   No. 13      MR. TAMBE: I have no further 14      questions. Thank you. 15      (Discussion off the record.) 16      (Luncheon Recess; Time Noted: 12:22 17      P.M.) 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2           AFTERNOON SESSION 3           (Time Noted: 1:07 P.M.) 4       ARCHIBALD COX, resumed and 5       testified further as follows: 6       EXAMINATION BY 7       MR. WOOD: 8       Q.   Mr. Cox, again, I'm John Wood from 9       Hughes, Hubbard &amp; Reed, and I represent the SIPA 10      Trustee. 11      I'm handing you what has previously 12      been marked as Exhibit 25, and that is the 13      signed version of what we have been referring to 14      earlier as the clarification letter. I believe 15      you testified earlier that you don't recall 16      reviewing any drafts of this document. 17      Do you recall whether you have seen 18      this final executed version of this? 19      A.   I may have seen it, but not -- didn't 20      have read it, to my knowledge. 21      Q.   Okay. If you can just keep that handy 22      because I may refer back to that in a moment. 23      Mr. Cox, I'm handing you what's 24      previously been marked as Exhibit 229. As 25      you'll see, it's an e-mail from Robert Azerad TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1           HIGHLY CONFIDENTIAL - A. COX 2       dated Sunday, September 21, at 6:20 P.M. 3       Subject is "Updated Opening Balance Sheet," and 4       then attached to it is just a one-page document. 5       Feel free to look that over. 6       A.   Yes. 7       Q.   And the attachment appears to be a 8       draft of an opening balance sheet, is that fair 9       to say? 10      MR. STERN: Objection to the form. 11      A.   I've never seen it before. 12      Q.   Okay. 13      A.   It, since it -- all I know is what it 14      says. It says in the cover sheet it's a copy of 15      opening balance sheet, version PB2.xls. 16      Q.   If you look at the attachment, you'll 17      see about midway down on the left the word 18      "receivables"? 19      A.   Yes. 20      Q.   And then a parenthetical, "15c3 lockup 21      release"? 22      A.   Yes. 23      Q.   And the number a thousand there? 24      A.   Yes. 25      Q.   Which, first of all, these numbers TSG Reporting - Worldwide (877) 702-9580</p>	<p>1           HIGHLY CONFIDENTIAL - A. COX 2       here all appear to be in thousands, don't they? 3       MR. STERN: Objection to the form. 4       A.   I guess I don't understand what your 5       question is. 6       Q.   Meaning that number you see for a 7       thousand for receivables, for purposes of my 8       next question, let's assume that's a billion 9       dollars. 10      MR. STERN: Objection to the form. Is 11      that a question? You're just making that 12      assumption? 13      MR. WOOD: I'm just telling him that 14      my next question will assume that. 15      Q.   That reference, which I read as being 16      a thousand -- sorry, which I read as being a 17      billion dollars from the 15c3 lockup, that was 18      not the number ultimately agreed upon between 19      the parties, was it? 20      MR. STERN: Objection to the form. 21      A.   I do not know. 22      Q.   Okay. If you'll take a look at 23      Exhibit 25, on page 4, numbered paragraph 8, 24      you'll see a little Roman ii, says "to the 25      extent permitted by applicable law, and as soon TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 as practicable after closing, \$769 million of 3 securities." 4 MR. STERN: Do you want to let Mr. Cox 5 read this paragraph? 6 MR. WOOD: Sure. He can take as long 7 as he'd like. 8 MR. STERN: Paragraph 8. 9 (Document review.) 10 A. Yes. 11 Q. As you'll see the reference to \$769 12 million of securities? 13 A. Yes. 14 Q. Do you know how that number was 15 chosen? 16 A. No idea. 17 Q. As far as you can recall, did anybody 18 say that cash from LBI's 15c3-3 account could 19 not be included in the deal? 20 A. I have no recollection of any -- of 21 that. 22 Q. If you look again on page 4 of Exhibit 23 25, the Clarification Letter, you'll see the 24 Roman numeral ii, "to the extent permitted by 25 applicable law?" TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. Yes. 3 Q. Have you seen that language before, as 4 far as you can recall? 5 MR. STERN: Objection to the form. 6 A. Have I seen what language, the phrase 7 "to the extent permitted by applicable law"? 8 Q. Have you seen that in the 9 Clarification Letter? 10 A. No, but I'm not sure whether I've read 11 the Clarification Letter before, so ... 12 Q. So is it fair to say you don't recall 13 any conversations about the inclusion of that 14 language in the clarification letter? 15 A. I do not -- I was not party to any 16 conversations about that. 17 Q. And then later in that same sentence, 18 the very end of that sentence, you see 19 "substantially the same" -- "securities of 20 substantially the same nature and value"? 21 A. Again -- 22 Q. You don't recall any conversations 23 about the inclusion of that? 24 A. No. No. 25 Q. Do you recall any discussions TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 regarding whether or not to include margin or 3 collateral held to secure derivatives either at 4 the OCC or other exchanges as part of the 5 purchased assets in the deal? 6 A. I wasn't party to any discussions 7 about those. 8 Q. Mr. Cox, I'm handing you what's 9 previously been marked as Exhibit 51. You'll 10 see at the top it is entitled "Transfer and 11 Assumption Agreement"? 12 A. I do. 13 Q. And as you see, this is a signed 14 version. Do you recall whether you've ever seen 15 that document before? 16 A. No. 17 Q. Were you previously aware that there 18 was a Transfer and Assumption Agreement? 19 A. No. 20 Q. Did you want more time to keep looking 21 it over? 22 MR. STERN: No, I think he's answered 23 the question. 24 MR. WOOD: Oh, okay. He was just 25 looking at it. I wanted to -- TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. No, I've never seen the document 3 before. 4 Q. Okay. Mr. Cox, I'm handing you what's 5 previously been marked as Exhibit 76B. It's an 6 e-mail chain. As you'll see, you're not on 7 that, but subject is, "If Bart is speaking to 8 Archie Cox, why can't Archie just show Barclays 9 everything we have at DTC. It's third-party 10 data and definitive," although "definitive" is 11 misspelled there. The text of the e-mail says, 12 "We are trying to explain what's in DTC. It 13 might make them more comfortable." 14 In that subject line where it refers 15 to Bart, is that Bart McDade? 16 MR. STERN: Objection. 17 Q. As far as you can tell? 18 MR. STERN: Objection to the form. 19 A. That's a presumption. 20 Q. Do you recall speaking to Bart McDade 21 regarding any of the subject matter discussed in 22 this e-mail? 23 A. No, I don't believe I ever did. I 24 certainly don't recall it. Nor does it make any 25 sense to me, but that's another matter. It's TSG Reporting - Worldwide (877) 702-9580</p>



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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 from Lehman. 3 (Exhibit 421B, a document bearing 4 Bates Nos. BCI-EX-81179, marked for 5 identification, as of this date.) 6 Q. We're handing you what has been marked 7 as Exhibit 421B. Feel free to take moment to 8 look that over. 9 (Document review.) 10 Q. Have you had a chance to look that 11 over? 12 A. No. 13 (Document review continues.) 14 A. All right. 15 Q. As you'll see, it's a single page of 16 e-mails, Bates number at the bottom ends in 17 81179. 18 At the bottom of the e-mail chain, so 19 the earliest one chronologically, appears to be 20 an e-mail from you to Bob Diamond, CC-ing Rich 21 Ricci and Michael Klein, sent Sunday, September 22 21, at 9:06 A.M. Subject is closing. As you'll 23 see, you wrote, "You should be aware, and may 24 be, that there are issues around clearing which 25 could be significant and thus affect closing." TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Do you recall what those issues were? 3 A. Not specifically. 4 Q. Do you recall generally? 5 A. It may have been related to JPMorgan 6 situation. I don't know what else -- I don't 7 know what else it could have been related to. I 8 don't recall it. I don't recall it. 9 Q. Could it also have been regarding 10 issues involving the DTC? 11 A. Possibly. 12 Q. Were you involved in the issues 13 regarding DTC? 14 A. Limited. Only on the periphery. 15 Q. Could you describe the nature of your 16 involvement? 17 A. Very limited. I knew there were 18 issues. I knew that Gerard LaRocca was talking 19 to the DTC trying to get them clarified. 20 Q. Do you recall what the issues were? 21 A. If I remember correctly, DTC was 22 concerned that they wouldn't -- I think they 23 would not unfreeze Lehman's account because of 24 some potential liability that they would have 25 and it needed to be unfrozen. TSG Reporting - Worldwide (877) 702-9580</p>
Page 92	Page 93
<p>1 HIGHLY CONFIDENTIAL - A. COX 2 (Exhibit 422B, a document bearing 3 Bates Nos. BCI-EX-81116, marked for 4 identification, as of this date.) 5 Q. We've just handed you what has been 6 marked as Exhibit 422B. Again, a single page of 7 e-mails. Bates numbers end in 81116. Go ahead 8 and take a moment to look that over. 9 (Document review.) 10 A. Okay. 11 Q. This one is from, at the bottom, so 12 the earliest chronologically, is from you to 13 Jerry del Missier, subject "Closing sent Sunday, 14 September 21." You write, "Right now we have 15 some major hurdles to overcome around DTCC and 16 JPM's intransigence." 17 Do you recall what that referred to? 18 A. Yeah, DTCC was the, I think the 19 freeing up of Lehman's account and JPMorgan 20 was -- was with regard to the tripartite 21 agreement and the substitution of collateral and 22 so forth. 23 Q. And do you recall what the major 24 hurdles you were referring to there that had to 25 be overcome with the DTCC were? TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. That I believe it was just the 3 freeing, the freeing up of, the unfreezing of 4 their account. 5 Q. Were you concerned that the deal 6 between Lehman and Barclays would not go through 7 if they didn't unfreeze the account? 8 A. Yes. 9 Q. Why? 10 A. Because there was, without the ability 11 to clear trades, so after all, we were taking on 12 Lehman's accounts, third-party accounts, and you 13 had to be able to clear Lehman's trades with 14 those third-party accounts would be 15 disadvantaged. 16 Q. Handing you what's previously been 17 marked as Exhibit 52. As you'll see, it's a 18 letter dated September 22, 2008 on the 19 letterhead of the Depository Trust &amp; Clearing 20 Corporation to Mr. John Rodefild. Subject is 21 "Winding Down of Accounts and Guarantee." 22 MR. STERN: Do you want Mr. Cox to 23 review this or do you want to ask him -- 24 MR. WOOD: If he would like. My 25 questions are going to be pretty general. TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 MR. STERN: Did you want to ask him if 3 he's ever seen it before? 4 MR. WOOD: I will. 5 Q. Do you want to look it over before 6 I -- well, I'll ask you the question: Have you 7 seen it before? And feel free to take time to 8 look at it. 9 A. No, I have not seen it before. 10 Q. Were you aware that such a letter 11 existed? 12 A. No. 13 Q. So I take it you would not be aware of 14 who from Barclays was involved in negotiating 15 this letter? 16 A. Only by presumption. 17 Q. And what's your presumption? 18 MR. STERN: Objection to the form. 19 He'd have to read in order to make the 20 presumption. 21 A. I don't know -- well, if it related to 22 the DTCC, I presume that Gerard LaRocca would 23 have been involved in it as well as John 24 Rodefild. 25 (Exhibit 423B, a transcript from the TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 United States Bankruptcy Court on September 3 19, 2008, marked for identification, as of 4 this date.) 5 Q. Mr. Cox, we've handed you what has 6 been marked as Exhibit 423B. As you'll see, 7 it's a transcript from the United States 8 Bankruptcy Court on September 19, 2008. 9 Needless to say, I'm not going to ask you to 10 review the document while we sit here. 11 A. Thank you. Nor, I hope, after we sit 12 here. 13 Q. What you do in your free time is up to 14 you, sir. 15 If you'll look at the -- towards the 16 bottom of page 46. 17 A. I presume that's between 45 and 47, 18 since I can't see. 19 Q. The odd-numbered pages are somewhat 20 obscured by the binder, but your assumption is 21 correct. You'll see where it says "Ms. Fife." 22 She says, "Thank you, your Honor," introduces 23 herself as Lori Fife of Weil Gotshal on behalf 24 of the debtors. 25 Turning over to the beginning or top TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 of page 47, you'll see she said, "So originally 3 we were selling assets that had a value of 70 -- 4 approximately \$70 billion, and today, your 5 Honor, we're only selling assets that have a 6 value of \$47.4 billion." 7 Do you know whether that \$47.4 billion 8 as represented in court includes the -- any 9 assets in LBI's clearance boxes at DTC? 10 MR. STERN: Objection to the form. 11 A. I have no knowledge at all. 12 Q. Do you know whether it includes that 13 \$769 million that we were discussing earlier 14 from the 15c3 account? 15 A. No idea. 16 Q. So then I also assume you don't know 17 whether it includes margin held to secure 18 derivatives? 19 A. Correct. 20 Q. Do you know whether the bankruptcy 21 court was ever notified that margin held to 22 secure derivatives would be included in 23 purchased assets under the deal? 24 MR. STERN: Objection to the form. 25 A. No knowledge. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Q. Do you know whether the bankruptcy 3 court was ever notified that \$769 million of 4 15c3-3 assets would be included? 5 A. No knowledge. 6 Q. Other than conversations with counsel, 7 were you involved in any conversations about 8 whether to notify the court of the inclusion of 9 any of those assets in the deal? 10 A. No. 11 MR. WOOD: I have nothing further 12 right now. 13 MR. STERN: James, you have some 14 questions? 15 MR. TECCE: I do. I'll be very brief. 16 EXAMINATION BY 17 MR. TECCE: 18 Q. Mr. Cox, good afternoon. I'm James 19 Tecce. I'm counsel for the Creditors Committee. 20 Briefly, sir, could I direct your 21 attention back to what I believe is 423B? 22 A. 423B. 23 Q. The sales transaction hearing. I also 24 am not going to ask you to read the whole 25 transcript. TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - A. COX  
2 A. Thank you.  
3 Is that for your benefit or mine.  
4 Q. That's for both of our benefit.  
5 MR. STERN: Good question.  
6 Q. I would just like to direct your  
7 attention to page 52, if I could.  
8 A. 52, yes.  
9 Q. Okay. Starting on line 16, where it  
10 says "Mr. Hirshon," he is counsel to the DTC?  
11 A. I'm sorry, page 50? What number did  
12 you say?  
13 Q. 52.  
14 A. 52. I'm sorry. Line 16, "Mr.  
15 Hirshon."  
16 Q. Right.  
17 A. He was counsel?  
18 Q. To the DTC.  
19 A. Right.  
20 Q. Depository Trust Clearance  
21 Corporation. About five or six lines down, he  
22 starts on line 21, he says, "The arrangement,  
23 now the arrangement is that the whole \$6 billion  
24 of residential mortgages will be there and  
25 subject to settlement, but the anticipation is

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1 HIGHLY CONFIDENTIAL - A. COX  
2 that, once all these claims settle, the trades  
3 that are from Wednesday through Monday settle,  
4 there will not be a need for all of that  
5 collateral. So what the amendment to the APA  
6 says is that the 50 percent will be returned as  
7 long as it is there."  
8 Do you have an understanding of what  
9 securities Mr. Hirshon is referring to in that  
10 section?  
11 MR. STERN: Objection to the form.  
12 A. I'm not sure I understand the  
13 question. It says that there -- it says -- he  
14 says here that the \$6 billion of residential  
15 mortgages is -- I assume that that's what you're  
16 asking?  
17 Q. Correct.  
18 A. Do I understand? I understand only  
19 what I read.  
20 Q. Sure enough. Allow me to ask the  
21 question differently.  
22 Do you have an understanding as to  
23 whether or not Barclays received any residential  
24 mortgage securities in connection with this sale  
25 transaction?

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1 HIGHLY CONFIDENTIAL - A. COX  
2 A. The residential mortgages were subject  
3 to a good deal of negotiation and discussion. I  
4 do not recall where we came out on those.  
5 Q. Okay. Do you have an understanding as  
6 to whether or not they were pledged to the DTC  
7 in connection with the sale transaction?  
8 A. I do not know for certain, no.  
9 Q. Do you have an understanding as to  
10 what the value of the residential mortgages that  
11 were discussed in the sale transaction  
12 negotiations was?  
13 MR. STERN: Objection to the form.  
14 A. Could you repeat the question, please?  
15 Q. Sure. The residential mortgage  
16 securities -- just reading back your answer, you  
17 said, "The residential mortgages were subject to  
18 a good deal of negotiation and discussion."  
19 A. Right.  
20 Q. My question is, what's your  
21 understanding of what the value of those  
22 mortgages was?  
23 A. I don't -- value in terms of -- I'm  
24 sorry, I still don't understand your question.  
25 Are you talking about the face value or the

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1 HIGHLY CONFIDENTIAL - A. COX  
2 approximate market value of the securities?  
3 Q. The market value of the securities.  
4 A. I think it changed. It started off at  
5 a fairly high number and it came down in time to  
6 a very different number, but I don't remember  
7 what number it exactly ended up at, if any. If  
8 any.  
9 Q. Do you remember if it was \$6 billion?  
10 A. No, I don't. I don't.  
11 Q. Do you have an understanding as to  
12 whether or not -- strike that. Just going back  
13 to your Exhibit 420B. This is an e-mail dated  
14 Monday, September 22, at 12 --  
15 MR. STERN: One second.  
16 MR. TECCE: Sure. Sure. Sorry.  
17 (Document handed to the witness.)  
18 MR. STERN: Okay.  
19 Q. Okay. This is your e-mail dated  
20 Monday, September 22, 2008, 12:29 A.M.  
21 The text of the e-mail reads that, "We  
22 have an agreement," correct? Were you involved  
23 in negotiations the Sunday night prior? Is that  
24 what took place with JPMorgan Chase?  
25 A. It's the same night.

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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 Q. That's what I mean. This is Monday 3 morning at 12:29, the Sunday night prior, 4 correct? 5 A. Yes, I guess, yes. I think I 6 understand your question. It's the same, same 7 night as Sunday night and at this time Monday -- 8 Q. That's correct. 9 A. -- Monday morning. 10 Q. Right. Do you recall whether the DTC 11 was a party to any of those discussions? 12 A. I do not have any recollection of the 13 DTC being a party to any discussions that 14 involved JPMorgan. 15 Q. Okay. Were you involved in any 16 discussions directly with the DTC that did not 17 involve JPMorgan? 18 A. No, I was not. Might I have been in 19 the room when there was a conference call? 20 Possibly, but I did not participate in the call. 21 Q. And do you recall whether or not the 22 issue of residential mortgage securities was 23 discussed that night? 24 A. I have no recollection of that. 25 Q. That's all I have.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 A. I'm sorry. I just don't remember the 3 nature of the discussions with the DTCC and how 4 that was finally -- the final resolution that 5 untied that knot. 6 MR. TECCE: Thank you. 7 MR. WOOD: Nothing else from us. 8 MR. STERN: Thanks very much. 9 MR. TECCE: Thank you for your time. 10 (Time Noted: 1:34 P.M.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>ARCHIBALD COX</p> <p>Subscribed and sworn to before me this day of 2009.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - A. COX 2 CERTIFICATE 3 STATE OF NEW YORK ) 4 : ss 5 COUNTY OF NEW YORK) 6 I, Kathy S. Klepfer, a Registered 7 Merit Reporter and Notary Public within and 8 for the State of New York, do hereby 9 certify: 10 That ARCHIBALD COX, the witness whose 11 deposition is herein before set forth, was 12 duly sworn by me and that such deposition is 13 a true record of the testimony given by such 14 witness. 15 I further certify that I am not 16 related to any of the parties to this action 17 by blood or marriage and that I am in no way 18 interested in the outcome of this matter. 19 I further certify that neither the 20 deponent nor a party requested a review of 21 the transcript pursuant to Federal Rule of 22 Civil Procedure 30(e) before the deposition 23 was completed. 24 In witness whereof, I have hereunto 25 set my hand this 11th day of September, 2009.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - A. COX 2 INDEX 3 WITNESS: EXAMINATION BY PAGE 4 A. COX Mr. Tambe 5 5 Mr. Wood 83 6 Mr. Tecce 97 7 EXHIBITS: PAGE 8 Exhibit 413B, a document bearing Bates Nos. 29 9 BCI-EX-(S)-26269 10 Exhibit 414B, a document bearing Bates Nos. 31 11 BCI-EX-115878 115879 12 Exhibit 415B, a document bearing Bates Nos. 36 13 BCI-EX-115964 through 115972 14 Exhibit 416B, a document bearing Bates Nos. 49 15 BCI-EX-116023 through 116030 16 Exhibit 417B, a document bearing Bates Nos. 50 17 BCI-EX-115898 through 115900 18 Exhibit 418B, a document bearing Bates Nos. 62 19 BCI-EX-79546 20 Exhibit 419B, a document bearing Bates Nos. 66 21 BCI-EX-79067 22 Exhibit 420B, a document bearing Bates Nos. 79 23 BCI-EX-80849 24 Exhibit 421B, a document bearing Bates Nos. 90 25 BCI-EX-81179</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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# BCI EXHIBIT

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1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----X

11  
12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF NANCY DENIG

14 New York, New York

15 August 21, 2009

16  
17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24044  
20  
21  
22  
23  
24  
25

Page 2	Page 3
<p>1 2 3 4 5 August 21, 2009 6 9:35 a.m. 7 8 9 Deposition of NANCY DENIG, held at 10 the offices of Jones Day, LLP, 222 East 41st 11 Street, New York, New York, before Mary F. 12 Bowman, a Registered Professional Reporter, 13 Certified Realtime Reporter, and Notary Public 14 of the State of New York. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017-6702 7 BY: WILLIAM J. HINE, ESQ. 8 GEORGE E. SPENCER, ESQ. 9 10 BOIES, SCHILLER &amp; FLEXNER, LLP 11 Attorneys for Barclays and The Witness 12 5301 Wisconsin Ave. NW 13 Washington, DC 20015 14 BY: JONATHAN M. SHAW, ESQ. 15 16 QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES, LLP 17 Attorneys for the Creditors Committee 18 51 Madison Avenue 19 New York, New York 10010 20 BY: ROBERT K. DAKIS, ESQ. 21 22 23 24 25</p>
Page 4	Page 5
<p>1 2 3 JENNER &amp; BLOCK, LLC 4 Attorneys for the Examiner 5 330 N. Wabash Avenue 6 Chicago, Illinois 60611-7603 7 BY: DAVID C. LAYDEN, ESQ. 8 9 HUGHES, HUBBARD &amp; REED, LLP 10 Attorneys for the SIPA Trustee 11 One Battery Park Plaza 12 New York, New York 10004-1482 13 BY: NEIL J. OXFORD, ESQ. 14 FARA TABATABAI, ESQ. 15 16 Also Present: 17 RAJESH ANKALKOTI, Alvarez &amp; Marsal 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and scaling be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>



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NANCY DENIG,

called as a witness by the parties,  
having been duly sworn, testified as  
follows:

EXAMINATION BY

MR. HINE:

Q. Good morning, Ms. Denig. How are you?

A. Good.

Q. I introduced myself before, but my  
name is Bill Hine. I am from the firm of Jones  
Day, which is special counsel to Lehman Brothers  
Holdings, Inc. in connection with all the  
bankruptcy proceedings that are going on.

So your deposition today is in  
connection with those proceedings and some  
discovery that we are taking in those proceedings.  
Have you ever been deposed before?

A. I have not.

Q. Very simple. I am going to ask you a  
bunch of questions. You are under oath, you are  
going to give me truthful answers.

On occasion your counsel will raise an  
objection or interpose an objection. He is either  
doing that for any number of reasons, but I just

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wanted to let you know that it doesn't relieve you  
of the obligation to answer the question. You  
still have to answer the question, unless of  
course your counsel instructs you not to answer  
the question, which he may do on occasion as well.

I think all the other counsel around  
the table will introduce themselves as they get up  
to ask you questions, if they have any, but if you  
have any questions -- unless you have any  
questions, we can get started.

One point of clarification before we  
get started. I see e-mails addressed to N. Bayne.  
Is that you?

A. That is my maiden name.

Q. So if I see --

A. Unfortunately when you were at Lehman,  
when I got married -- my user profile before I got  
married was N. Bayne, which was my maiden name.  
When I got married, in order for them to change  
the user name, they would have had to delete me  
from the system altogether and I would have to  
reapply for all my applications, which I didn't  
want to do because I was already four years into  
the company, so I left my user name as N. Bayne.

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Q. If I see an e-mail addressed to  
N. Bayne at Lehman --

A. That's me.

Q. Could you tell me how long you worked  
for Lehman?

A. 15 years.

Q. So that's starting in --

A. 1994, January 20.

Q. OK. And could you kind of briefly  
walk me through the progressions of positions you  
held up until the end?

A. I started as an analyst in customer  
service, which dealt with like trade discrepancies  
for fixed income products.

Moved to P&L in the finance division,  
where I supported the repo desk for central  
funding for all types of fixed income assets.

I then took on various different  
groups throughout the life, sales support, trade  
support, P&L, structured repo, EMG, trade and  
sales support, and probably that was pretty much  
it. So I pretty much stayed on the fixed income  
side pretty much all my career.

Q. What was the last position you held?

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A. Last position, regional head for fixed  
income repo, middle office, so that was trade  
support, so we supported the traders in the daily  
transactions that they executed.

We did sales support, which also  
supported any trade confirmations, sales  
confirmations, trade discrepancies with regards to  
the salespeople.

We did -- we reported the P&L to the  
business lines, and, you know, some various little  
odds and ends, but nothing that needs to be  
clarified.

Q. Who did you report to in that  
position?

A. Jim Hraska.

Q. Any other people that you reported to  
directly?

A. No.

Q. How long have you held this position?

A. Three years of all that. I just kept  
getting more stuff added to me as my career  
progressed. So I started with one group and got  
another one, another, another. But  
basically all in the same business line.

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1 DENIG - CONFIDENTIAL

2 Q. So the description you just gave me of

3 your job --

4 A. With everything was about three years

5 that I had that.

6 Q. For about three years?

7 A. Yeah.

8 Q. And who reported directly to you in

9 the last three-year period?

10 A. Carroll Schirmacher, Anthony

11 D'Agostino, Anthony Rivera, who was -- job

12 elimination at some point during the layoffs at

13 Lehman Brothers, Tom Rogers and Dave Regan. And

14 that was pretty much it.

15 Q. I believe you said, you mentioned the

16 phrase "repo" in your description of your job.

17 Could you just -- did you focus primarily on

18 repurchase transactions?

19 A. Yes. As it related -- well, I

20 wouldn't say repo transactions. The desk was

21 defined that we supported as the repo desk, but

22 they had different facets of the business. They

23 had a business -- they did plain vanilla swaps.

24 They did outright trades. They did other

25 disciplines.

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1 DENIG - CONFIDENTIAL

2 Q. Who is the head of finance at Barclays

3 that runs the P&L department?

4 A. In our division, it is Kevin Horan.

5 Q. Above him?

6 A. I don't remember his name. Martin

7 Kelly. Martin Kelly.

8 Q. And when you did the P&L work during

9 your time at Lehman, did you -- did that work get

10 provided to Martin Kelly?

11 A. No. Ultimately with Ian Lowitt.

12 Q. I just want to take a quick diversion

13 here. I don't mean to pry into personal matters,

14 but I do have to ask you about your compensation.

15 MR. SHAW: Just so you know, this is

16 all highly confidential, so you can feel

17 free to speak about that.

18 Q. Do you have an employment contract

19 with Barclays?

20 A. No. Well, except for the "can" letter

21 that every employee received on the Monday morning

22 of September 22nd, that we accepted or rejected.

23 Q. And you accepted?

24 A. I accepted.

25 Q. You sent in an e-mail that said

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1 DENIG - CONFIDENTIAL

2 But for the most part, the name of the

3 department was the financing desk that dealt with

4 repos.

5 Q. OK. And at some point in time, you

6 went to work for Barclays, correct? When was

7 that?

8 MR. SHAW: You need to answer things

9 orally. They can't get a head shake or nod.

10 A. September 22nd.

11 Q. And when -- you are still at Barclays?

12 A. I am.

13 Q. What's your position at Barclays?

14 A. Pretty much the same. Same role

15 without P&L.

16 Q. Without P&L meaning --

17 A. We had a middle office construct in

18 Lehman that included the reporting of P&L. At

19 Barclays they don't have that model, so basically

20 it is just the support.

21 Q. Where is the P&L operation run?

22 A. In finance.

23 MR. SHAW: You need to let him finish

24 his answer, and give me a chance to get an

25 objection in if I need to.

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1 DENIG - CONFIDENTIAL

2 accepted?

3 A. Yes.

4 Q. Could you just tell me what you made

5 in your last position at Lehman?

6 A. Total comp?

7 Q. Annual basis, yes.

8 A. Annual was [REDACTED] base, and bonus in 2008

9 was [REDACTED]

10 Q. [REDACTED]?

11 A. [REDACTED]

12 Q. Was that paid in the form of cash

13 bonus or stock?

14 A. 6 percent was stock. The rest was

15 cash bonus.

16 Q. And were you paid that before you left

17 Lehman?

18 A. Yes.

19 MR. SHAW: Just so we are clear, when

20 you say '08, that would be February of '08?

21 THE WITNESS: Yes, February of '08.

22 Q. So is that the bonus for the year

23 2007?

24 A. No -- well, yeah, yes. Yes. Sorry.

25 Q. Just so I have that clear, your base

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1 salary was [REDACTED]?

2 A. Um-hm, yes.

3 Q. Was that for 2007?

4 A. No. The base salary was 2008's base  
5 salary, but in February of 2008, I was paid the  
6 [REDACTED] as my bonus for 2007.

7 Q. And that bonus consisted of 6 percent  
8 stock and the rest was in cash, correct?

9 A. Yes.

10 Q. Now, you did get a bonus for 2008?

11 A. Yes.

12 Q. When did you get that?

13 A. When? February 23rd.

14 Q. This is after you --

15 A. Had been employed at Barclays.

16 Q. And how much was that?

17 A. [REDACTED]

18 Q. Was that also in stock and cash?

19 A. No, just cash.

20 Q. And do you know how that figure was  
21 arrived at?

22 MR. SHAW: Objection.

23 A. No.

24 Q. Do you have any input into how that  
25

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1 figure was --

2 A. How mine is?

3 Q. Yeah.

4 A. No.

5 Q. And so in your current position at  
6 Barclays, is your base salary still [REDACTED]?

7 A. It is [REDACTED]

8 Q. That's [REDACTED]?

9 A. Yes.

10 Q. And am I correct to say on  
11 February 23, you were paid [REDACTED] as a bonus to  
12 reflect the work you did in 2008?

13 A. Yes.

14 Q. Some of which was for Barclays and  
15 some of which was for Lehman, right?

16 A. Yes.

17 Q. Did they break down the percentage of  
18 the bonus that was related to your Barclays work  
19 as opposed to your Lehman work for that year?

20 A. No.

21 Q. I've seen -- since you went to  
22 Barclays, have you been offered any other forms of  
23 compensation?

24 A. At Barclays?  
25

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DENIG - CONFIDENTIAL

1 Q. Yeah.

2 A. No.

3 Q. You don't have any kind of special  
4 cash award?

5 A. No.

6 Q. Were you offered any kind of retention  
7 bonus to promote you staying there for a long  
8 period of time?

9 A. No.

10 Q. So far as you know, your Barclays  
11 compensation consists of a base salary of [REDACTED]  
12 plus a bonus?

13 A. Subject to whatever going forward.

14 Q. So you don't know what the bonus is  
15 going to be for this year, 2009, correct?

16 A. I do not.

17 Q. Do you expect to be paid that in  
18 February of 2010?

19 A. 2010.

20 Q. Throughout this deposition, we are  
21 going to talk about different dates, so let's get  
22 some of them out of -- I believe you mentioned  
23 September 22, which is the Monday that the sale  
24 transaction closed, correct -- let me just clarify  
25

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1 that.

2 You understand that at some point in  
3 time, Lehman sold its North American broker/dealer  
4 business to Barclays, correct?

5 A. Yes.

6 Q. And that closed, the closing of that  
7 transaction was on September 22, 2008, right?

8 A. Yes.

9 Q. And so my question has to do with your  
10 compensation. Did you have any conversations with  
11 anyone at Barclays about your going to work for  
12 Barclays prior to September 22, 2008?

13 A. No.

14 Q. Did you have any conversations with  
15 anyone at Lehman about the possibility of you  
16 moving over and becoming a Barclays employee  
17 before September 22?

18 A. No.

19 Q. When did you first -- so on  
20 September 22, did you have any expectation that  
21 you would become a Barclays employee?

22 A. I was hopeful, but no.

23 Q. Did you hear any rumors around Lehman  
24 the week before September 22 about what was going  
25

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2 to happen to all the Lehman employees?  
3 A. No. We -- as far as we were told, we  
4 were all to be retained.  
5 Q. Who told you that?  
6 A. TV, CNN, documents that were posted on  
7 Reuters and Bloomberg.  
8 Q. Did you hear that from any senior  
9 executives at Lehman?  
10 A. No. Again, all hopeful. Everybody  
11 was hopeful.  
12 Q. And so was there any -- when you --  
13 when September 22 came around, you were hopeful of  
14 getting a job, but you had no guarantee of getting  
15 a job until you received an offer from Barclays?  
16 A. Yes.  
17 Q. What did that offer consist of?  
18 A. A "can" letter just saying that you  
19 were to retain employment until December 31 of  
20 2009 -- 8. Basically it was a three-month  
21 contract.  
22 Q. Did that letter contain any  
23 description of the compensation that was going to  
24 be paid to you?  
25 A. No, it did not.

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1 DENIG - CONFIDENTIAL  
2 Q. -- from Barclays that was to  
3 constitute compensation for the year 2008,  
4 correct?  
5 A. Yes. That got communicated to me on  
6 February 15, that that was -- of 2009, and that  
7 would be what would be my number.  
8 Q. Who told you that.  
9 A. Jim Hraska.  
10 Q. How did he find that out, do you know?  
11 A. I think he determined it.  
12 Q. Was there any negotiation around that  
13 amount?  
14 A. No.  
15 Q. We are going to leave your  
16 compensation. Can I take a step back and get a  
17 sense of your role in this whole Lehman Barclays  
18 transaction which encompasses several different  
19 aspects. I think it will just make the deposition  
20 go quicker.  
21 Let's go to a date. September 15 of  
22 2008, which is the Monday prior to the closing,  
23 which we understand to be the date -- well, that  
24 is the date when Lehman Brothers Holdings, Inc.  
25 filed for bankruptcy.

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2 Q. So you clicked on e-mail and accepted  
3 the employment?  
4 A. Yes.  
5 Q. Not knowing how much you were going to  
6 be paid?  
7 A. Yes.  
8 Q. And when did you learn what you were  
9 going to be paid?  
10 A. I guess I didn't ever. Like they  
11 just -- the salary continued. It was no -- there  
12 was no talk of it or any official letters coming  
13 to any of the employees around -- well, not  
14 anyone, at least anybody that worked for me, of  
15 figures and where we signed anything.  
16 Q. Did you have any conversation with  
17 anyone about the [REDACTED] bonus you received around  
18 February of 2009?  
19 A. No.  
20 Q. You just got a check in the mail?  
21 A. For in February or --  
22 Q. Well, I thought you said you got, in  
23 February you got a bonus -- I am sorry, [REDACTED]  
24 bonus --  
25 A. [REDACTED], yeah.

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2 Did you have any -- prior to that  
3 date, did you have any knowledge that Barclays and  
4 Lehman had been in some kind of discussions about  
5 a transaction?  
6 A. CNN over the weekend, and we were --  
7 basically 7 p.m. we were told that Barclays PLC  
8 could not do the whole company or they were on the  
9 table as one company that was going to be  
10 interested in buying Lehman, and then at 7:30 the  
11 Sunday night before, we were told that they  
12 weren't able to get -- do the deal.  
13 Q. And you were told through what means?  
14 A. E-mails and phone calls from Jim.  
15 Q. From Jim Hraska?  
16 A. Yes.  
17 Q. Did you -- so let's talk about the  
18 period before you're told that. Any involvement  
19 at all with those discussions between Barclays and  
20 Lehman?  
21 A. No.  
22 Q. Were you asked to provide any  
23 information in support of those discussions?  
24 A. No.  
25 Q. Ever called into a conference room and

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asked, or asked to provide a spreadsheet or anything?

A. Not before the 15th of September.

Q. OK. Then on the 15th, Lehman Holdings files for bankruptcy. Did you have any role in preparing the bankruptcy filing?

A. No.

Q. Did you have any role in providing information to those who were preparing a bankruptcy filing?

A. No.

Q. Did the bankruptcy filing come as a surprise to you that Monday?

A. No.

Q. Why not?

A. Just from what we heard throughout the weekend. It was all over CNN and, you know, everybody and every one of my friends calling me, giving me updates as to what was going on with Lehman.

Q. OK, but internally from your superiors at Lehman --

A. No --

Q. -- you didn't hear anything?

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the lines of communication between our group, the traders and settlements was open, and that everything was being transacted properly so we wouldn't have any misbookings.

Q. You said a lot there so I am going to take it piece by piece.

You said there was an effort during that week to keep the broker arm, LBI, going.

A. Yes.

Q. Now, why did they want to keep LBI going? Do you know?

MR. SHAW: Objection, foundation.

Q. You can answer.

A. Well, at that point, we didn't know any other -- that we felt the broker/dealer was going to stay as a going concern.

Q. OK. Had you had any idea that the broker/dealer would file for bankruptcy later that week?

A. No, not on Monday.

Q. Did you later learn that?

A. Yes.

Q. When did you learn that?

A. Wednesday.

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MR. SHAW: Let him finish.

Q. Now, there comes a time on the 15th when Barclays comes back and starts speaking to Lehman again about a transaction. Did you have any role in that negotiations between Barclays and Lehman?

A. No.

Q. Well, could you describe generally what you did that week, the week of October -- from September 15th to the 22nd?

A. Well, starting on September 15, it was just a matter of trying to keep the broker/dealer, LBI portion of it running, going. Supporting the traders that were trying to get liquidity within the firm.

And Barclays was a big part of that, as far as providing additional funding, where other liquidity providers stopped giving us the cash and the Fed basically -- the Fed programs that were available at the time were being used to do that facilitation. And we were just very close to it.

My job was just to make sure that all the positions that we had were settling, that all

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Q. What did you hear about that?

A. That we were going to be -- that the Fed was going to be stepping out of the transaction of all the collateral that we had being funded by them. That they wanted Barclays to take over that transaction.

Q. How did that relate to the LBI filing for bankruptcy?

A. Because -- at that particular time, if we got rid of everything we had, the only funding we were getting was from the Fed, and Barclays was now going to have it, we would have nothing to go -- we would have nothing to be able to continue going as a going concern. We would have no assets.

Q. So did you surmise that LBI was going bankrupt or were you told that that was going to take place?

A. I don't know if I was told outright. I think there was sort of speculation that that was the way it was going until, say, Thursday, when it was definitive that that was what was going to happen.

Q. And what did you hear on Thursday that

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2 made you think it was definitive?  
3 A. I think they said that Barclays was  
4 going to file Chapter 11 or Chapter 7 for the  
5 broker/dealer.  
6 Q. Barclays?  
7 A. Yes.  
8 Q. Not LBI?  
9 A. No. I think Barclays was going to  
10 file for -- I think they owned it at that  
11 particular time, and they were going to file for  
12 bankruptcy on behalf of the broker/dealer.  
13 Q. OK. Let me just step back and try to  
14 piece some of this together.  
15 You mentioned the Fed program.  
16 A. Um-hm.  
17 Q. Tell me what your role was in  
18 connection with the Fed program again.  
19 A. Well, there were three specific Fed  
20 programs that were available to broker/dealers.  
21 And my groups were responsible for booking the  
22 transactions and then reconciling them with the  
23 Fed on a daily basis.  
24 Q. So these are overnight financings,  
25 correct?

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2 Q. Just so I can finish my -- just so I  
3 can understand, in your hypothetical, if you  
4 wanted the Fed to pay you 100 million, you would  
5 have to post 102 million in collateral?  
6 A. Yes.  
7 Q. So in connection with these Fed  
8 programs that you were working on to support LBI,  
9 what was the haircut that the Fed insisted on?  
10 MR. SHAW: Objection. Foundation.  
11 Go ahead.  
12 Q. You can answer.  
13 A. It depended.  
14 Q. On what?  
15 A. On the collateral itself.  
16 Q. Can you explain that?  
17 A. Different types of collateral had more  
18 favorable haircuts than the more exotic or toxic  
19 type of assets.  
20 Q. When you say more favorable, you mean  
21 lower percentage?  
22 A. Lower grade like Treasuries, agencies,  
23 mortgage collateral, was more liquid in the  
24 market, and you wouldn't -- they didn't make you  
25 pay as much for them.

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2 A. Yes, except for the TSLF, which is  
3 more term. There is a 30-day term or 28-day term  
4 program.  
5 Q. That's TCLF?  
6 A. TSLF.  
7 Q. Are you familiar with the term  
8 "haircut" in connection with the Fed transaction?  
9 A. Am I familiar with the word "haircut"  
10 as it relates to --  
11 Q. Yes.  
12 A. Yes.  
13 Q. What does a haircut mean when you're  
14 talking about these Fed programs?  
15 A. It would be an amount in addition to  
16 the par value of the securities that you would  
17 have to give them in order to do the transaction.  
18 So -- do you need a for instance?  
19 Q. Yeah.  
20 A. If you have a 100 million trade that's  
21 worth 100 million in price, the Fed would require  
22 you to pay 2 percent more for that transaction.  
23 Q. So meaning you would have to --  
24 A. Pay 102 million for the same  
25 transaction.

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2 Q. And then some more exotic  
3 instruments --  
4 A. Yes.  
5 Q. -- you would have to pay a higher  
6 haircut?  
7 A. Yes.  
8 Q. Is that right?  
9 A. Yes.  
10 Q. Was there an aggregate haircut that  
11 you folks calculated as relates to all these Fed  
12 programs in connection with your financing of LBI?  
13 MR. SHAW: Objection, foundation.  
14 A. I don't remember actually.  
15 Q. I've seen references to a 20 percent  
16 haircut in some of the e-mails. Does that ring a  
17 bell or is that --  
18 A. With regards to the actual Fed  
19 programs?  
20 Q. Yeah.  
21 A. It could be for the PDCF, which is a  
22 primary dealer credit facility. They were all  
23 corporate and exotic type of assets, so I would  
24 say yes. But the TSLF and our overnight program,  
25 I would think that was way too high.

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2 Q. So they were much smaller for those  
3 two programs?  
4 A. Yeah.  
5 Q. Is -- I apologize if I am outside my  
6 area of expertise here. I am trying to understand  
7 the business that you guys consider everyday  
8 activity.  
9 But if -- am I correct to say that the  
10 Fed -- in connection with these Fed programs, by  
11 Wednesday, you had posted about 50 billion dollars  
12 in collateral in exchange for 45 billion in cash  
13 for the Fed; is that right?  
14 A. I don't know if that was the final  
15 figure from the Fed. What I do know is that we  
16 got a file from Chase that told us what the  
17 individual collateral was that we had to the Fed  
18 and what they anticipated market value of it was.  
19 Q. And what was that market value?  
20 A. The first file that we received was  
21 42,2.  
22 Q. Now, why is --  
23 A. 44,2. 42,2 or 44,2.  
24 Q. Well, tell you what. You mentioned  
25 this file. I think I have seen that, so let me

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2 Chase?  
3 A. Yes.  
4 Q. Why is Chase sending this document?  
5 A. They were our custodian.  
6 Q. In connection with the Fed financings?  
7 A. Yes.  
8 Q. And what was the purpose of Chase  
9 sending this to you?  
10 A. To tell us what each facility that we  
11 had on with the Fed, what the value of it was  
12 worth.  
13 Q. And Chase was placing its own value on  
14 those securities?  
15 A. I can't be sure of where they came up  
16 with the market value.  
17 Q. And was it the same as the values you  
18 folks placed on those securities?  
19 MR. SHAW: Objection, foundation.  
20 A. We -- well, the way we booked it is a  
21 lot different than actually assigning market  
22 values, which we didn't do. The transfer of or  
23 the delivery of these securities were booked with  
24 no value on them.  
25 And, you know, I don't know if you

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2 try to find a copy and we can talk about that,  
3 because that was going to be one of my questions.  
4 Ms. Denig, I am handing you a copy of  
5 an exhibit that we previously marked as 125.  
6 MR. SHAW: Take whatever time you need  
7 to look at it.  
8 Q. Please take a moment to look at it. I  
9 have a question once you're ready.  
10 A. I am ready.  
11 Q. You have had a chance to look at that?  
12 A. Yes.  
13 Q. Is this the document to which you were  
14 just referring?  
15 A. Yes.  
16 Q. And can you tell me what this document  
17 is? Again, I'm not so much concerned about the  
18 covering e-mail but the one-page chart that's  
19 attached that's entitled "Booking Amounts."  
20 A. Yes. This is not the original that we  
21 received from Chase. This is my version of what  
22 the denominations were of the trades that my guys  
23 booked that day. But the totals are exactly the  
24 same that we received from Chase.  
25 Q. So this started as a document from

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2 want to get into that now or just concentrate on  
3 this document first, but I mean the way we booked  
4 the trade is a lot different than probably your  
5 understanding of it.  
6 Q. I would like to understand what's the  
7 difference. Why the difference?  
8 A. So typically when you book a DVP  
9 transaction and there would be a par value, a  
10 principal value based on a price, and when you  
11 make delivery, the assets go and cash is received,  
12 and it is a simultaneous transaction.  
13 For these that was not the case. We  
14 actually booked the trades for par value,  
15 delivered them for free to a particular -- a BoNY  
16 location of where Barclays' accounts were, and we  
17 booked separately the cash that they sent us.  
18 Q. Are you talking about the Fed program  
19 now or Barclays?  
20 A. Well, we stepped into the Barclays  
21 role. This, this particular transaction, it was  
22 related to how we booked the trade to Barclays.  
23 This spreadsheet was how we booked the trade to  
24 Barclays. The original amounts is what we had at  
25 Chase.

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2 Q. Let me just understand this chart and

3 then we can talk about -- when you say booking

4 amounts, what does that refer to?

5 A. This is on September 18.

6 Q. OK.

7 A. Which is the day we booked the trade

8 and Fed stepped out of the trade, and now Barclays

9 was our liquidity provider for these securities.

10 These are the amounts that I booked. So these

11 amounts were to Barclays. But the -- this column,

12 the second -- this column here with the par

13 amounts was given to us by Chase.

14 Q. OK, let's just step back for a second.

15 On the 18th, you were involved in the transferring

16 of the securities from the Fed program to a new

17 repo that was executed with Barclays?

18 A. Yes.

19 Q. Correct?

20 A. Yes.

21 Q. So going forward, can we call that the

22 September 18 repo, just so we are on the same

23 page?

24 A. Sure.

25 Q. And Bank of New York was the --

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2 A. This is the market value that Chase

3 put on it.

4 Q. So that column, which totals 47,

5 approximately 47.5 billion dollars, is the --

6 reflects the market value that Chase ascribed to

7 the securities that were in the Fed program?

8 A. That's correct.

9 Q. Now, let's continue on the chart a

10 little to the right, and again, I'm not trying to

11 be laborious here, I just need to get a clear

12 record.

13 The column which starts with

14 108.49 billion -- million, do you see that?

15 A. Yes. Million. These are actual

16 figures.

17 Q. OK. Now, that totals down to 44.2

18 billion dollars. Do you see that column?

19 A. Yes.

20 Q. What does that column reflect?

21 A. The par value -- I am sorry, the cash

22 value that we booked the trades at.

23 Q. Can you explain that to me?

24 A. So they came and said that the

25 projected value -- again, this is not the original

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2 A. Custodian for Barclays.

3 Q. And who was your custodian?

4 A. Chase.

5 Q. So on the 18th, you are -- when you

6 talk about booking, you are talking about

7 transferring assets or securities that were

8 previously in the Fed program held by Chase,

9 correct?

10 A. Yes, um-hm.

11 Q. Into what, an account at BoNY for the

12 benefit of Barclays? Is that right?

13 A. Yes.

14 Q. You talked about a bunch of columns.

15 I just want to get it clear on the record.

16 The second column, second large column

17 on this chart, which starts with 7.1 billion

18 dollars, do you see that?

19 A. Yes.

20 Q. That, those numbers are what?

21 A. Those are the par value of the assets

22 that were in the OMO program with the Fed.

23 Q. And what's the column to the left of

24 that which talks about 109,406,353? Do you see

25 that?

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2 that we received from Chase. This is after I

3 determined how I was going to physically book the

4 trades. This is my breakout of how we physically

5 booked them to Barclays.

6 The total that -- of this forty-four

7 two was the projected value of the collateral that

8 Chase gave it as far as the cash. This is --

9 includes market value and haircuts. This 42.2 was

10 what the cash value, projected cash value was that

11 Barclays was going to pay us.

12 Q. You pointed to different columns.

13 When you're testifying, we have to do it a little

14 formally here. So I think you just pointed to the

15 column that had the 47.5 and said --

16 A. Yes.

17 Q. And said that is Chase's market value

18 for those securities, right?

19 A. Yes, yes.

20 MR. SHAW: Let him finish the

21 questions. We have time, we will get

22 through all of it.

23 Q. The column that totals the 44.2 is the

24 amount of cash that Barclays was going to convey

25 to Lehman in exchange for posting those securities



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<p>1 DENIG - CONFIDENTIAL</p> <p>2 as collateral?</p> <p>3 A. Yes.</p> <p>4 Q. So the difference in the two is the</p> <p>5 haircut for the September 18 repo?</p> <p>6 A. For all intents and purposes, yes.</p> <p>7 Q. And now the column on the far right</p> <p>8 has 108-some-odd million dollars. That's the</p> <p>9 first entry. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And what is that?</p> <p>12 A. That is the cash ticket that I booked.</p> <p>13 Q. So that's to reflect an actual receipt</p> <p>14 of cash?</p> <p>15 A. Yes.</p> <p>16 Q. So --</p> <p>17 A. So the same 42.2 was broken down into</p> <p>18 the column -- all the way over to the right, those</p> <p>19 are the individual specific trades that I booked.</p> <p>20 So there is one, two, three, four, five, six,</p> <p>21 seven, eight, nine, ten trades that I booked cash</p> <p>22 value-wise that totaled the forty-four two.</p> <p>23 Q. So you ultimately did book into</p> <p>24 Lehman's system 44.2 billion dollars?</p> <p>25 A. Yes.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. And that's the cash that Lehman</p> <p>3 received from Barclays on the 18th?</p> <p>4 A. The cash was 45 million (sic)</p> <p>5 eventually, but --</p> <p>6 Q. Well --</p> <p>7 A. This was the original, this was the</p> <p>8 original pass that we got. When it was determined</p> <p>9 that it was going to be 45 billion, those numbers</p> <p>10 did get changed, so this is not the final</p> <p>11 document.</p> <p>12 Q. OK. This is sometime --</p> <p>13 A. This was about 1 o'clock on Thursday</p> <p>14 afternoon that this was put together.</p> <p>15 Q. On Thursday afternoon?</p> <p>16 A. Right, for September 18th.</p> <p>17 Q. Then ultimately 45 billion was</p> <p>18 transferred to Lehman?</p> <p>19 A. Yes.</p> <p>20 Q. From Barclays?</p> <p>21 A. Yes.</p> <p>22 Q. Why the difference?</p> <p>23 A. No idea.</p> <p>24 Q. No idea, OK. So did you -- so this</p> <p>25 is -- is this one of several spreadsheets you</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 prepared during the day to reflect all this?</p> <p>3 A. Yes.</p> <p>4 Q. So is there -- there probably exists</p> <p>5 somewhere another spreadsheet that totals to</p> <p>6 45 billion?</p> <p>7 A. Yes.</p> <p>8 Q. OK. Did the valuations in the</p> <p>9 left-hand column change at all during the day, the</p> <p>10 ones that total to 47.5 billion?</p> <p>11 A. I do not believe it did.</p> <p>12 Q. OK. I apologize but some of today is</p> <p>13 going to be walking through spreadsheets that we</p> <p>14 are just trying to understand. So I want to show</p> <p>15 you another document, which is marked as</p> <p>16 Exhibit 60B, which was previously marked as</p> <p>17 Exhibit 60B, which appears to me, as the</p> <p>18 uninitiated, a similar type of spreadsheet, so I</p> <p>19 wanted to see if you could explain to me the</p> <p>20 difference between the two.</p> <p>21 First of all, take a minute to look at</p> <p>22 Exhibit 60B. Have you had a chance to look at</p> <p>23 that?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Can you tell me what this -- again, I</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 am not so much concerned about the covering e-mail</p> <p>3 but the chart that consists of page 2 of this</p> <p>4 document, could you tell me what this is?</p> <p>5 A. This is the actual trades that Chase</p> <p>6 had on its books and records of the program</p> <p>7 facilities that we had out to the Fed the end of</p> <p>8 day 17th, September 17th. So Wednesday, end of</p> <p>9 day Wednesday, this is what they had in the</p> <p>10 program.</p> <p>11 Q. So this is a chart prepared by Chase?</p> <p>12 A. Yes.</p> <p>13 Q. As your -- as the custodian for the</p> <p>14 Fed programs?</p> <p>15 A. Yes.</p> <p>16 Q. And now could we just walk through the</p> <p>17 columns here.</p> <p>18 Par amount is just a par value that</p> <p>19 Chase ascribes to all the securities posted to</p> <p>20 those programs?</p> <p>21 A. Yes.</p> <p>22 Q. Current market value is the -- the</p> <p>23 column that's marked "current market," what is</p> <p>24 that?</p> <p>25 A. That would be the market value that it</p>

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2 assigned to those securities.  
3 Q. "It" being Chase?  
4 A. Yes.  
5 Q. And now pay-down amount, what is that?  
6 A. I'm not sure. But the anticipated  
7 prefunded dollar amount, that was what technically  
8 they were saying that the -- to be conservative,  
9 that's what Barclays was going to pay us for those  
10 assets.  
11 Q. OK. And do you have any idea why that  
12 number is different than the pay-down amount?  
13 A. No.  
14 Q. Could pay-down amount be the amount  
15 that the Fed was expecting to get paid back when  
16 it released the securities?  
17 MR. SHAW: Objection, foundation.  
18 A. I'm not sure.  
19 Q. OK. Do you know if the haircut for  
20 the Barclays -- for the September 18 repo was any  
21 different than the haircut used in the Fed  
22 programs?  
23 A. No.  
24 Q. No, you don't know, or no, it was not  
25 different?

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2 10303555, two pages, marked for  
3 identification, as of this date.)  
4 Q. Ms. Denig, I am handing you a copy of  
5 a document we have marked as Exhibit 232, which is  
6 an e-mail stream dated Monday, September 15, in  
7 which you are a recipient. If you could take a  
8 moment to look at that.  
9 A. OK.  
10 Q. Do you recall receiving this e-mail at  
11 all?  
12 A. Yes.  
13 Q. Can you just generally describe for me  
14 what the debate was that's going on in connection  
15 with this e-mail?  
16 A. I'm not sure it is a debate. I think  
17 it is more informational purposes, just to tell  
18 them relatively based on asset class what type of  
19 haircuts are provided.  
20 As I explained before, I said that  
21 better collateral, like agencies and U.S.  
22 Treasuries, mortgages, have a lower haircut.  
23 Private labels, asset backs and equity corporates  
24 have higher haircuts.  
25 So he basically is explaining that in

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2 A. No, it was not different.  
3 Q. It was not different?  
4 A. No.  
5 Q. So my -- so to your understanding, the  
6 same haircut was applied -- let's step back.  
7 I thought you said there were  
8 different haircuts applied to different types of  
9 securities in the Fed program, correct?  
10 A. Yes.  
11 Q. Were the same haircuts applied to the  
12 same types of securities for the September 18  
13 repo?  
14 MR. SHAW: Objection, foundation.  
15 A. Yes, yes.  
16 Q. Yes, to your knowledge?  
17 A. To my knowledge.  
18 Q. Do you have any -- were you involved  
19 in any negotiations and discussions about the  
20 amounts of haircuts?  
21 A. I'm sure there was e-mails, but no, I  
22 wasn't the one determining any -- if anything, I  
23 was cc'd on mails to the traders.  
24 Q. OK.  
25 (Exhibit 232, document Bates stamped

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2 here. So it looks like haircuts 20 percent for  
3 nongovernment agency, and equities and corporates  
4 are 15 percent wider, which means that they are  
5 going to be higher than general liquid assets.  
6 And at the last one, where it says for  
7 all AAA and AA, which is around corporates and  
8 equities, 10 percent higher than this 20 percent,  
9 and for all others flat to lower than 15 percent,  
10 which means that for Treasuries and agencies you  
11 are either going to have no haircut or up to 10  
12 percent based on the type of collateral it is.  
13 And basically everybody on here are  
14 senior people that understand that that's the  
15 nature of how the collateral works and haircuts  
16 work.  
17 Q. At the bottom it says -- one e-mail  
18 from Mr. Tonucci, it says, "Do you have haircuts  
19 from Fed versus our normal haircuts?" Are the  
20 haircuts you just described --  
21 A. Yes.  
22 Q. -- abnormal?  
23 A. No. The ones that I -- these  
24 10 percent, 20 percent, no, they are very normal.  
25 Q. They are very normal?

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2 A. Yes.  
3 Q. Did the -- do you have any notion of  
4 the types of securities that were posted to the  
5 Fed, were they predominantly the safer securities  
6 that you have discussed or the ones with the lower  
7 haircuts?  
8 A. I would say it was a 50/50 mix.  
9 Actually maybe more, more liquid assets.  
10 Q. More liquid assets which would mean a  
11 higher haircut?  
12 A. No, lower haircut. These would be  
13 assets that are no problem being funded on the  
14 street. Even based on this, you could see that.  
15 Q. Let me ask -- this is my outsider's  
16 question so I apologize if this sounds naive, but  
17 I understand to the Fed program, Lehman posted  
18 about 50 billion dollars in collateral and  
19 received 45 billion dollars in cash. Does that  
20 sound about right to you?  
21 A. Yes.  
22 Q. Doesn't that 5 billion dollar haircut  
23 reflect about a 10 percent haircut, 5 over 50?  
24 A. Yes.  
25 Q. So that seems lower than the numbers

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2 collateral that was posted to the Fed and  
3 collateral that ultimately made it into the  
4 September 18 repo?  
5 A. The individual CUSIPs? Yes.  
6 Q. What was -- can you describe for me  
7 the difference?  
8 A. Well, for the Fed programs, they  
9 basically take whatever is left in the box at the  
10 custodian, at Chase. After all of the regular  
11 delivery versus payment activity is finished for  
12 the day, which is done at probably by 3:30 in the  
13 middle of a regular business day, OK, from that  
14 point going forward, we see what we have left and  
15 they book trades to reflect the values of the  
16 collateral that were going into the Fed.  
17 Q. OK, I think you're losing me here.  
18 A. OK. So say, for instance, you have  
19 50 billion left in collateral. We would write  
20 tickets that would go down to Chase, and Chase  
21 would fill these -- they are called shells, with  
22 certain types of assets based on the shell we  
23 booked.  
24 At the end of day, that's what we  
25 would do. After everything was done, that is

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1 DENIG - CONFIDENTIAL  
2 you're talking about in this e-mail chain?  
3 A. Well, if it was an average, then it  
4 would make sense.  
5 Q. How is that?  
6 A. Because the higher -- the worse the  
7 collateral is, like the corporate bonds that are,  
8 you know, BBB rated and lower, equities and, you  
9 know, some of the mortgage type of assets have a  
10 much higher haircut than general collateral, which  
11 would be liquid markets, U.S. Treasuries and  
12 agencies, which would have 2 percent, versus the  
13 equities and stuff would have, say, anywhere from  
14 15 to 35 percent haircut.  
15 So I guess as an average, that  
16 20 percent would sort of make sense.  
17 Q. Well, it comes to 10 percent.  
18 A. I am sorry, 10 percent would make  
19 sense.  
20 Q. The 10 percent suggests that the  
21 majority of the collateral posted to the Fed was  
22 the more -- the safer assets, right?  
23 MR. SHAW: Objection to form.  
24 A. Um-hm, yes.  
25 Q. Was there any difference between the

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1 DENIG - CONFIDENTIAL  
2 business as usual.  
3 Q. This gets done on Monday night,  
4 Tuesday night and then Wednesday night?  
5 A. Yes.  
6 Q. All right. Finish your -- I didn't  
7 mean to interrupt your story. Keep going.  
8 A. At the end of Wednesday we got a list  
9 of collateral, individual pieces that went into  
10 the Fed programs, that was what we thought was  
11 going to be what we sent to Barclays on Thursday.  
12 Q. Right.  
13 A. On Thursday when we started booking to  
14 transactions, it became clear very quickly that we  
15 didn't have the assets on our books that we were  
16 booking, and there is systems within the front-end  
17 trader systems that would reflect where the  
18 position sat. So as I booked them, their  
19 positions get decremented or increased depending  
20 on the direction.  
21 Here I was booking repo transactions,  
22 which was sells, and it was showing they are short  
23 instead of flat.  
24 Q. You are talking about Thursday you are  
25 doing this?

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. Yes, yup.</p> <p>3 Q. So you're -- just so I can understand</p> <p>4 this, you're trying to book a transaction that</p> <p>5 would post this collateral to the Bank of New York</p> <p>6 account on behalf of Barclays, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you're finding out that some of</p> <p>9 the collateral is not available for you to do</p> <p>10 that, right?</p> <p>11 A. That's correct.</p> <p>12 Q. What types of collateral is not</p> <p>13 available for you to do that?</p> <p>14 A. Fed deliverable collateral.</p> <p>15 Q. And what does that mean?</p> <p>16 A. Treasuries, agencies, mortgages.</p> <p>17 Q. So those were -- a group of those were</p> <p>18 not available for you to post to Barclays, right?</p> <p>19 A. That's correct.</p> <p>20 Q. And how much were you unable to post</p> <p>21 to Barclays?</p> <p>22 A. 8 billion.</p> <p>23 Q. 8 billion. OK. And so what did you</p> <p>24 do instead?</p> <p>25 A. We reached out to the settlements</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 group and we asked them what they had long in the</p> <p>3 box, versus trade -- pending deliveries or actual</p> <p>4 trades that were booked, and substituted the</p> <p>5 collateral that we originally booked.</p> <p>6 Q. Now, you say the settlements group.</p> <p>7 Is that at Chase?</p> <p>8 A. No. At Lehman.</p> <p>9 Q. Who was that?</p> <p>10 A. Lenny Legotte.</p> <p>11 Q. Who does he work for?</p> <p>12 A. He worked for Jack Fondacaro, who</p> <p>13 ultimately worked for Neal Ullman.</p> <p>14 Q. Just trying to get people's positions.</p> <p>15 A. Sure.</p> <p>16 Q. What type of collateral was ultimately</p> <p>17 substituted for this 8 billion that you were</p> <p>18 unable to transfer?</p> <p>19 A. Same type, Treasuries, agencies.</p> <p>20 Q. Were there certain types of collateral</p> <p>21 that Barclays would not accept into their</p> <p>22 September 18 repo?</p> <p>23 A. Yes.</p> <p>24 Q. Like what?</p> <p>25 A. Lehman paper, real estate type of</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 CUSIPs, certain equities, just more toxic, no</p> <p>3 value, you know, not able to determine a market</p> <p>4 value, they didn't want it.</p> <p>5 Q. So they excluded the more toxic</p> <p>6 securities from their September 18 repo?</p> <p>7 A. Yes, yes, yes.</p> <p>8 Q. Were some of those assets previously</p> <p>9 posted to the Fed for their financing?</p> <p>10 A. I wouldn't be able to tell that.</p> <p>11 Q. How do you know what Barclays</p> <p>12 excluded?</p> <p>13 A. We received a list.</p> <p>14 Q. OK. From who?</p> <p>15 A. Jim Hraska.</p> <p>16 Q. This is not going in the order I</p> <p>17 planned so I have to get a new exhibit.</p> <p>18 So other than this 8 billion dollars</p> <p>19 in securities, were you able to transfer all the</p> <p>20 securities from the Fed financings to the Barclays</p> <p>21 September 18 repo?</p> <p>22 A. No. Because there were other issues</p> <p>23 throughout the day that were pending deliveries</p> <p>24 of -- you know, there was a regular day of</p> <p>25 transactions going on, and there were pending</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 deliveries that were queued up at Chase. So when</p> <p>3 this transaction started, or when they gave us the</p> <p>4 first 5 billion, they were -- the cash came in,</p> <p>5 Chase would release the securities to the free box</p> <p>6 to start making the deliveries over to BoNY, but</p> <p>7 because there were other pending deliveries out</p> <p>8 there, some -- those securities were made on those</p> <p>9 deliveries instead of to BoNY, again, creating the</p> <p>10 same problem, that we needed to substitute the</p> <p>11 collateral that was originally expected to go.</p> <p>12 Q. So am I correct, just so I can</p> <p>13 understand this, the trading desk was in the</p> <p>14 process of doing their normal trades, so they took</p> <p>15 priority over some of the assets that were</p> <p>16 released by Chase?</p> <p>17 A. I wouldn't think it was priority.</p> <p>18 Q. This is just a queue system?</p> <p>19 A. It's just a queued system.</p> <p>20 Q. What did you do to make up that</p> <p>21 shortfall?</p> <p>22 A. Same type of scenario. Went to the</p> <p>23 clearance folks, they went to the DTC terminals to</p> <p>24 try to determine what collateral was available.</p> <p>25 Q. Were you able to make up the entire</p>

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2 shortfall?  
3 A. We weren't.  
4 Q. And so what did you do then?  
5 A. Because we basically ran out of time,  
6 the Fed and the DTC depositories ended up shutting  
7 down at a particular time and we didn't get  
8 everything that we wanted to over, because it  
9 wasn't enough time to do all the research.  
10 Q. And you're talking about Thursday  
11 evening?  
12 A. Thursday evening around 11 o'clock.  
13 Q. So what was the shortfall by the time  
14 of -- by the time you ended on Thursday night?  
15 A. I am not 100 percent sure of what the  
16 final figure was, but I want to say it was  
17 42 billion is what they received.  
18 Q. OK. So 42 is not the shortfall, 42 is  
19 what ultimately did make it?  
20 A. Yeah.  
21 Q. Was there a 7 or 8 billion dollar  
22 shortfall, do you recall?  
23 A. Yes.  
24 Q. Is that the genesis of what I have  
25 seen referred to as box loan?

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1 DENIG - CONFIDENTIAL  
2 Q. I understand. OK.  
3 So now you have gotten us through  
4 Thursday night. What did you do Friday morning or  
5 Friday during the day?  
6 A. Well, we -- there was a lot of --  
7 Q. I just mean Friday, the 19th of  
8 September.  
9 A. 19th. So first thing in the morning,  
10 what we thought was pulled, that they were short  
11 collateral that we didn't finish, to try to get as  
12 much collateral that we knew was available in the  
13 DTC, because at this point the Fed collateral was  
14 all exhausted. We didn't have Treasuries,  
15 agencies. They went. They were delivered and  
16 they were reconciled with Barclays, that they  
17 received them.  
18 The assets that we ran out of time to  
19 send were the DTC, what you referenced as 074  
20 collateral, 636 collateral, which are the two DTC  
21 boxes that Lehman Brothers, Inc. owned.  
22 The traders were basically using their  
23 front-end capture system to determine what the  
24 positions were that they had available and what  
25 they knew as unencumbered, and they delivered

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1 DENIG - CONFIDENTIAL  
2 A. Yes.  
3 Q. And can you tell me what that is?  
4 A. Well, because we didn't -- we couldn't  
5 make the rest of the collateral, because of the  
6 timing, they didn't receive the value of  
7 7 million -- 7 billion worth of collateral. So  
8 Chase lent Lehman 7 billion dollars to give back  
9 to -- to give to Barclays to make up that.  
10 Typically you wouldn't collateralize  
11 cash with cash, but at that late hour, that was  
12 really the only way to facilitate that so that  
13 Barclays was made whole.  
14 Q. And what secured that loan?  
15 A. Chase. The assets that we still had  
16 in the box, that Lehman still had in the box.  
17 Q. And the box meaning what?  
18 A. Our free collateral box, meaning any  
19 assets that didn't get delivered over to BoNY and  
20 was still in the possession of Lehman Brothers,  
21 Inc.  
22 Q. And is that the 074 box?  
23 A. No, it was a Chase box.  
24 Q. OK. 074 box is separate?  
25 A. That's a DTC box.

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2 those via pledge mechanism to DTC, a DTC box for  
3 BoNY, which was owned technically by Barclays.  
4 Q. And how much collateral was  
5 transferred to the BoNY box in connection with  
6 that effort?  
7 A. A billion dollars, a billion and  
8 change.  
9 Q. And now what was the purpose of  
10 transferring that to that BoNY box?  
11 MR. SHAW: Objection, foundation.  
12 A. We were under the impression we were  
13 still short market value.  
14 Q. So that was short market value in  
15 connection with the September 18 repo?  
16 A. Yes.  
17 Q. So was that billion and change to  
18 substitute in for the cash that had been placed in  
19 the repo through the box loan?  
20 MR. SHAW: Objection, foundation.  
21 A. It wasn't my -- it wasn't my  
22 understanding, no.  
23 Q. What did you understand it to be for?  
24 A. It was just that BoNY said that they  
25 didn't have enough market value, you need to give

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1 DENIG - CONFIDENTIAL  
2 us more collateral to make up for the 45 billion.  
3 Q. That's the 45 billion that we had  
4 talked about previously on these charts?  
5 A. Yes.  
6 Q. So -- well, so is it your  
7 understanding that the -- OK. So that was your  
8 work on Friday, to transfer a billion one into the  
9 BoNY box in support of the September 18 repo?  
10 A. Yes.  
11 MR. SHAW: Objection to form.  
12 Q. And what ended up happening to the  
13 September 18 repo?  
14 MR. SHAW: Objection. Vague.  
15 A. Yeah, I -- what do you mean by that?  
16 Q. Well, was it terminated, defaulted, or  
17 do you recall what ultimately happened to all the  
18 collateral that was posted toward the September 18  
19 repo?  
20 MR. SHAW: Objection, foundation.  
21 A. On the 19th, no. But the 22nd, yes.  
22 Q. What happened on the 22nd?  
23 A. They said that the repo went into  
24 default.  
25 Q. Who is "they"?

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1 DENIG - CONFIDENTIAL  
2 A. Yes.  
3 Q. And were there any other changes made  
4 to it?  
5 MR. SHAW: Objection, foundation.  
6 A. Yes, because the original value of the  
7 cash was forty-four two. We had to adjust it to  
8 45 billion.  
9 Q. And why did -- where did that 45 come  
10 from?  
11 A. That's what Barclays ended up  
12 physically paying us for the assets. Where that  
13 figure came up with -- I was just told to change  
14 the total cash values to be -- to equal 45 billion  
15 instead of the forty-four two which was originally  
16 given to me.  
17 Q. OK. Forty-four two is the number we  
18 talked about earlier?  
19 A. Yes.  
20 MR. SHAW: Whenever you reach a good  
21 stopping point, we have been going about an  
22 hour.  
23 MR. HINE: Sure, let's take a break.  
24 (Recess)  
25 BY MR. HINE:

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2 A. Barclays to my senior management to  
3 me.  
4 Q. What did that mean as far as where the  
5 collateral went?  
6 A. The collateral was there at Barclays  
7 already. We had trade bookings in Lehman Brothers  
8 of a repo transaction that went from September 18  
9 to September 25. The fact that they deemed the  
10 repo to be in default, we had to term the trade  
11 earlier than -- and put an end date of  
12 September 22 on it.  
13 Q. OK, I was -- I'm seeing -- we are  
14 going to bring out a chart which I think is what  
15 you're talking about. Are you talking about on  
16 the MTS system how you booked the trades?  
17 A. Yes, yes.  
18 Q. And so how -- the original, back to  
19 Thursday, how is that booked? What was the end  
20 date for the repo on Thursday?  
21 A. September 25.  
22 Q. And then when did you change it to the  
23 22nd?  
24 A. Monday.  
25 Q. On the 22nd itself?

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1 DENIG - CONFIDENTIAL  
2 Q. Ms. Denig, I just want to follow up on  
3 a couple things we talked about. I guess I am  
4 trying to understand the 1 point -- one and change  
5 billion dollars that you said was transferred on  
6 Friday. What was the total amount that was  
7 supposed to have been transferred to the September  
8 18 repo in terms of collateral?  
9 A. The 49 and change billion market  
10 value.  
11 Q. And so how much did you transfer as of  
12 Thursday night?  
13 A. I don't actually know the final  
14 figure. So basically it was communicated to me  
15 Monday morning that we still needed -- there was a  
16 shortfall and we needed to get more to them.  
17 Q. So you understood from that  
18 communication that the amount that had been  
19 transferred Thursday night plus the box loan was  
20 not enough to cover what was supposed to have been  
21 transferred to the repo?  
22 A. Yes.  
23 Q. And who determined that?  
24 A. I don't know who determined it. I  
25 just know I was told by my boss that we were

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 short.</p> <p>3 Q. And who placed a value on these</p> <p>4 securities?</p> <p>5 MR. SHAW: Objection, foundation.</p> <p>6 A. I don't know.</p> <p>7 Q. Well, let's go back. The 42 and</p> <p>8 change, whatever was transferred Thursday night,</p> <p>9 is that figure Lehman's valuation of those -- of</p> <p>10 that collateral?</p> <p>11 MR. SHAW: Objection, foundation.</p> <p>12 A. I don't believe -- I don't believe so.</p> <p>13 Q. Whose do you think it was?</p> <p>14 A. I think it was between Chase and BoNY.</p> <p>15 Q. OK. Do you recall any differences</p> <p>16 between the BoNY valuation -- I have seen e-mails</p> <p>17 referencing the BoNY valuations or Bank of New</p> <p>18 York valuations. Do you recall any differences --</p> <p>19 differences between the Bank of New York</p> <p>20 valuations and the Lehman, the values Lehman had</p> <p>21 placed on these securities?</p> <p>22 A. I don't, I don't recall.</p> <p>23 Q. Do you recall any discussions or</p> <p>24 documents suggesting that Bank of New York placed</p> <p>25 a value of about 45 billion on securities that</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Lehman valued in the 42 billion dollar range?</p> <p>3 A. I don't recall, sorry.</p> <p>4 Q. Would you know why the two entities</p> <p>5 would come up with different valuations?</p> <p>6 A. No.</p> <p>7 Q. Do you have a -- could you speculate?</p> <p>8 What do you think?</p> <p>9 MR. SHAW: Objection, calls for</p> <p>10 speculation.</p> <p>11 Don't speculate.</p> <p>12 Q. You can speculate.</p> <p>13 A. Yeah, I don't know. I don't know what</p> <p>14 the models they use in each bank to come up, or</p> <p>15 determine what their market values are.</p> <p>16 Q. You mentioned the 1 billion and change</p> <p>17 that was transferred Friday.</p> <p>18 A. Um-hm. Yes.</p> <p>19 Q. I've seen references in some of the</p> <p>20 e-mails to an effort to locate unencumbered assets</p> <p>21 on -- starting I guess Friday into Saturday. Is</p> <p>22 that -- were you involved in that at all?</p> <p>23 A. Yes, I was.</p> <p>24 Q. Is that -- I've seen e-mails</p> <p>25 suggesting there was a goal of 1.9 billion dollars</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 at some point. Do you recall that?</p> <p>3 A. Yes.</p> <p>4 Q. Is that different than the 1 billion</p> <p>5 and change that you mentioned earlier?</p> <p>6 A. No.</p> <p>7 MR. SHAW: Objection to form.</p> <p>8 A. No.</p> <p>9 Q. Let me rephrase here.</p> <p>10 Were you ever told Friday through the</p> <p>11 weekend, you were supposed to be looking for</p> <p>12 unencumbered assets?</p> <p>13 A. Yes.</p> <p>14 Q. What did you understand that to be</p> <p>15 for?</p> <p>16 A. A shortfall from the repo transaction.</p> <p>17 Q. OK. And so what did you do in</p> <p>18 connection with searching for unencumbered assets?</p> <p>19 A. We received files from our GFS</p> <p>20 technology, which is a system that did an</p> <p>21 aggregation of all the collateral we had broken</p> <p>22 down to individual trading accounts, and the</p> <p>23 definitions of those trading accounts were to --</p> <p>24 able to let us determine whether or not it was</p> <p>25 firm inventory or customer inventory.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 So based on the information that we</p> <p>3 received from our -- the books and records that</p> <p>4 Lehman had at the time, we were potentially able</p> <p>5 to determine what was not customer collateral and</p> <p>6 that would be free and clear to deliver to</p> <p>7 Barclays.</p> <p>8 Q. Free and clear is unencumbered?</p> <p>9 A. Yes.</p> <p>10 Q. Is that what I see referred to as the</p> <p>11 O74 and the 636 boxes?</p> <p>12 A. Yes.</p> <p>13 Q. So were you ever told at any point</p> <p>14 that there was a goal of getting 1.9 billion in</p> <p>15 unencumbered collateral?</p> <p>16 A. Yes.</p> <p>17 Q. Who told you that?</p> <p>18 A. Jim.</p> <p>19 Q. Did that goal change over time?</p> <p>20 MR. SHAW: Objection, foundation.</p> <p>21 Q. Over the weekend?</p> <p>22 A. Not over that weekend, no.</p> <p>23 Q. So once you -- what did you understand</p> <p>24 the 1.9 billion goal came from? Or where the</p> <p>25 1.9 billion dollar goal came from?</p>

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2 A. We were under the impression it was a

3 shortfall of the market value of the repo.

4 Q. So that -- so the September 18 repo?

5 A. Yes.

6 Q. And did you, you folks in fact find

7 1.9 billion dollars in unencumbered assets?

8 A. We did.

9 Q. And what happened with those assets?

10 MR. SHAW: Objection, foundation.

11 A. They were to be delivered to Barclays

12 after we determined whether or not they really

13 were unencumbered.

14 Q. And were they delivered to Barclays?

15 MR. SHAW: Objection, foundation.

16 A. I believe they were.

17 Q. And how much of those unencumbered --

18 what was the value of the unencumbered assets that

19 were delivered to Barclays?

20 A. That I do not know.

21 Q. Do you think that's different than the

22 one billion and change you mentioned earlier that

23 was transferred Friday?

24 MR. SHAW: Objection, form.

25 A. I wouldn't know that.

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2 assets that were transferred on the 29th and 30th?

3 A. I remember one box was 235 millionish,

4 the other box wasn't as much, just under 200.

5 Q. And those boxes you are talking about

6 are 074 box and 636 box?

7 A. Yes.

8 Q. You say there were further securities

9 transferred in December?

10 A. I heard that. So I wasn't involved at

11 all in that determination, but I knew that there

12 was another delivery at some point.

13 Q. Am I correct to say your involvement

14 in that search for unencumbered assets ended at or

15 around the 29th and 30th of September?

16 A. I would say yes.

17 Q. And then someone else did it

18 thereafter?

19 A. Yes.

20 Q. Did you ever hear of anything called

21 Schedule B?

22 A. Yes.

23 Q. What is it?

24 A. I don't know actually. I knew there

25 was another schedule. I know that Jim had

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2 Q. You wouldn't know that?

3 A. No.

4 Q. Were these unencumbered assets that we

5 just talked about transferred to Barclays over the

6 weekend?

7 A. No.

8 Q. When were they transferred?

9 A. There were some that were transferred

10 on the 29th of September. There were some that

11 were transferred on the 30th of September. And

12 then sometime in December, there was more assets.

13 But literally my role ended after probably the

14 next -- after the end of the next week, I wasn't

15 involved anymore.

16 Q. Let me get some dates here. So the

17 closing is on Monday, the 22nd?

18 A. Um-hm.

19 Q. So there is an effort even after the

20 closing to find unencumbered assets?

21 A. Yes, yes.

22 Q. And those assets were transferred on

23 the 29th and 30th of September to Barclays?

24 A. Yes, they were.

25 Q. And do you recall the amount of those

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2 forwarded me the schedule a few times or list of

3 assets to cut up in different ways so that he

4 could determine things, but as far as determining

5 anything, it was just me playing around with the

6 spreadsheet and sending it back to him.

7 Q. Let me ask you this. Did you ever see

8 the asset purchase agreement that -- relating to

9 the transaction between Lehman and Barclays?

10 A. The physical agreement?

11 Q. Yeah.

12 A. No.

13 Q. Did you have any understanding during

14 the week of September 15 what its terms were?

15 A. No.

16 Q. Did you have any understanding during

17 the week of September 15 what the deal was in

18 general between Barclays and Lehman?

19 A. No.

20 Q. What did you think was going on with

21 all this activity between Barclays and Lehman

22 during that week?

23 A. That we were to -- that they were

24 purchasing our assets.

25 Q. But you weren't -- you had no



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1 DENIG - CONFIDENTIAL  
2 understanding of what assets; is that right?  
3 A. Just the list that -- the  
4 understanding that we had was the Fed was stepping  
5 out of the transaction, Barclays was going to take  
6 it in. The fact that we had no other liquidity  
7 providers besides the Fed at that particular time  
8 and Barclays, that was all -- basically once we  
9 transferred the assets, we would have nothing left  
10 of the company.  
11 Q. So you understood the September 18  
12 repo was -- part of the reason you had entered  
13 into that would be to transfer assets to Barclays?  
14 MR. SHAW: Objection to form.  
15 A. Yes.  
16 Q. And did you ever hear any discussions  
17 about defaulting on the repo, on that repo?  
18 A. Not that week.  
19 Q. What did you hear the following week?  
20 A. That we went bankrupt, they filed for  
21 bankruptcy at -- on Friday at 4 o'clock and that  
22 the repo was now in default.  
23 Q. Did you ever hear any discussions or  
24 mention of a possibility of terminating the repo  
25 on, say, Friday the 19th?

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1 DENIG - CONFIDENTIAL  
2 Q. Do they get to keep all the assets or  
3 do they have to return the haircut?  
4 A. No. They get to keep all the assets.  
5 Q. Did you ever hear any discussion  
6 during the week of September 15 about a discount  
7 being granted to Barclays as to the assets they  
8 were going to buy?  
9 A. No.  
10 Q. Did you ever hear any discussion or  
11 mention of the notion of using the repo as a means  
12 of giving Barclays a discount on those assets?  
13 A. No.  
14 Q. Did you ever hear any discussions or  
15 mention of the notion of Barclays keeping the  
16 haircut portion of the September 18 repo?  
17 A. No.  
18 Q. How about since you have been at  
19 Barclays, have you ever heard any discussions  
20 about any of those things?  
21 A. No.  
22 Q. Since you have been at Barclays,  
23 anyone mention the notion of a discount associated  
24 with the Lehman/Barclays transaction?  
25 A. No.

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1 DENIG - CONFIDENTIAL  
2 A. No.  
3 Q. Did you ever see a notice of  
4 termination issued for that repo?  
5 A. No.  
6 Q. Did you ever hear anything about a  
7 notice of termination being issued for that repo?  
8 A. No.  
9 Q. Did you ever hear any discussions  
10 about changing the September 18 repo into a sale  
11 of assets?  
12 A. It wouldn't be a sale. We did reflect  
13 in Lehman's books the fact that they are no longer  
14 on our books because the trade became a default,  
15 like they kept the assets at that particular time,  
16 and that's by nature how a default is transacted.  
17 Q. What do you mean?  
18 A. Because we delivered securities to  
19 them, they delivered us cash, they now have the  
20 assets. When the company goes bankrupt, they  
21 can't return the assets because we are no longer a  
22 company.  
23 So they go out to the open market to  
24 raise the cash that they lost or what they paid  
25 for the assets.

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2 Q. Since you have been at Barclays, has  
3 anyone said, hey, we got a good deal on those  
4 assets, we got them at a discount?  
5 A. No.  
6 Q. Or words to that effect?  
7 A. No.  
8 Q. Can I just ask you a question about  
9 the M -- I think it's called MTS system. Can you  
10 tell me what that is generally?  
11 A. It is our official books and records.  
12 It's our settlement system. It is how we had  
13 connectivity to all our custodians and -- what are  
14 they called -- depositories.  
15 Q. So you use this system all the time?  
16 A. Yes.  
17 MR. SHAW: Can we clarify the  
18 difference between use at Lehman, use at  
19 Barclays.  
20 Q. Yeah, let's do that. When you were  
21 working for Lehman, you regularly used this MTS  
22 system?  
23 A. Yes.  
24 Q. How is that different from GFS?  
25 A. GFS was an aggregator of information.

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 MTS was how deliveries were physically transmitted</p> <p>3 to our custodians.</p> <p>4 Q. Did you have any role in valuing</p> <p>5 securities in your position?</p> <p>6 A. No.</p> <p>7 Q. Again I am talking about in your days</p> <p>8 at Lehman.</p> <p>9 A. Yes.</p> <p>10 Q. Who placed the values on these, all</p> <p>11 the securities we have been talking about that</p> <p>12 were used to post as collateral?</p> <p>13 A. I have no idea. I am assuming very</p> <p>14 higher-up people. The fact that we -- we booked</p> <p>15 the trades at no value and we received in cash, as</p> <p>16 a bifurcated transaction.</p> <p>17 Q. Ms. Denig, I am going to show you a</p> <p>18 document which I think relates to what you just</p> <p>19 told me, but I'm not sure. It has been previously</p> <p>20 marked as Exhibit 134.</p> <p>21 And I'm not sure you have seen it in</p> <p>22 this form, in written form, but I believe this is</p> <p>23 a printout from this MTS system we are talking</p> <p>24 about, and so my first question is, does this look</p> <p>25 like what I just -- does this look like the</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 information contained on the MTS system?</p> <p>3 MR. SHAW: Take whatever time you need</p> <p>4 to make sure that you are comfortable</p> <p>5 answering the question on the basis of that.</p> <p>6 Q. I'm not going to ask you -- you can</p> <p>7 review the document as much as you want. I am not</p> <p>8 going to ask you detailed information about all</p> <p>9 the entries other than probably the first page. I</p> <p>10 just want to get an understanding of what this is.</p> <p>11 A. Can you repeat your question.</p> <p>12 Q. Is this the type of information that's</p> <p>13 contained in the MTS system?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Does this look like a printout of the</p> <p>16 MTS system that you would use in your position at</p> <p>17 Lehman?</p> <p>18 A. Our historical database, yes.</p> <p>19 Q. That's a portion of the MTS system?</p> <p>20 A. Yes.</p> <p>21 Q. If you look on the first page, you</p> <p>22 will see a series of entries that -- I am looking</p> <p>23 under the net amount column. You will see a</p> <p>24 series of entries that total down to approximately</p> <p>25 44.99 billion dollars. Do you see that?</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Below that is a series of entries with</p> <p>4 zero in that column. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that the booking of that zero cost</p> <p>7 you were talking about?</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell me again why you do it</p> <p>10 this way?</p> <p>11 A. We don't typically do it this way.</p> <p>12 Because they were the specific assets that went to</p> <p>13 the Fed program, and that's basically what we were</p> <p>14 to transfer to Barclays as part of this repo, to</p> <p>15 ensure that's the assets we were sending, we did</p> <p>16 them as a one-for-one security delivery instead of</p> <p>17 letting Chase's triparty allocation system do it</p> <p>18 for us.</p> <p>19 Q. Is that what they call free repos?</p> <p>20 A. These are booked as free repos, but</p> <p>21 the transaction was traditionally papered as a</p> <p>22 triparty transaction.</p> <p>23 Q. So am I correct to understand what you</p> <p>24 just said, rather than having Chase allocate the</p> <p>25 approximately 45 billion dollars to individual</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 repos which amounted to -- or individual</p> <p>3 securities which amounted in the thousands, I</p> <p>4 imagine, you just booked it this way for</p> <p>5 simplicity purposes?</p> <p>6 A. No. As a matter of fact, it was a lot</p> <p>7 more arduous booking it this way. We booked</p> <p>8 individual trades, where typically you just book a</p> <p>9 shell and Chase's allocation system fills the</p> <p>10 shell.</p> <p>11 Q. So why did you want to do it this way</p> <p>12 then?</p> <p>13 A. We needed specific assets to go. We</p> <p>14 didn't want a random mix. We wanted -- these are</p> <p>15 the -- this is the securities that were supposed</p> <p>16 to go. This is what we needed to book.</p> <p>17 Q. OK. So in other words, the excluded</p> <p>18 securities you didn't want included in here, so</p> <p>19 you had to go CUSIP by CUSIP?</p> <p>20 A. Yes.</p> <p>21 Q. OK. When you see towards the</p> <p>22 right-hand column of this, when you see something</p> <p>23 called product subtype -- do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Third-to-last column, and then it</p>

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2 refers to -- some of the entries say HIC and  
3 others say receipts.  
4 A. Yes.  
5 Q. Do you know what that means, those two  
6 entries?  
7 A. No.  
8 Q. Do you ever --  
9 A. I know what a HIC is, a HIC  
10 transaction, but why they are classified as such,  
11 I don't know.  
12 Q. See where it says -- toward the  
13 right-hand side of the column is a column entitled  
14 "Fin Rate." Finance rate, I assume?  
15 A. Yes.  
16 Q. And it has "4" under it for a lot of  
17 the entries. Do you see that?  
18 A. Yes.  
19 Q. Is that the repo rate?  
20 A. Yes.  
21 Q. So that's the repo rate for the  
22 September 18 repo?  
23 A. Yes.  
24 Q. And then further to the right you see  
25 something called clear date?

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2 Q. And tell me again why you were doing  
3 that on that date?  
4 A. Because we originally booked the trade  
5 cash value to total forty-four billion two. I was  
6 told to modify it to 45 billion.  
7 Q. And this was on the 23rd after the  
8 closing?  
9 A. Yes.  
10 Q. You don't know why you were told to  
11 modify it like that?  
12 A. Barclays physically paid us  
13 45 billion. That was why.  
14 Q. That's the distinction between the  
15 45 billion and forty-four two we talked about  
16 earlier?  
17 A. Yes.  
18 Q. If you turn to the second blue sheet,  
19 in the first -- the page right behind the first  
20 blue sheet in this document.  
21 A. Blue sheet.  
22 Q. It is about a third of the way down  
23 the document. Do you see -- I don't have a Bates  
24 number on this page, but it is a similar type of  
25 spreadsheet, and you will see, if you look at the

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1 DENIG - CONFIDENTIAL  
2 A. Yes.  
3 Q. What is that?  
4 A. That's the date that the settlement  
5 took place.  
6 Q. So this is booked on the 18th. It  
7 says the 18th there?  
8 A. Well, it is booked on the 18th to  
9 settle on the 18th -- and it was settled on the  
10 18th.  
11 Q. Why is the first one booked on the  
12 23rd then?  
13 A. It could have been modified.  
14 Remember, I had to modify the amounts from  
15 forty-four two to 45 billion. That might have  
16 been the day that I did that transaction. It  
17 is -- because if you look in entry date, which is  
18 E/D --  
19 Q. E/D.  
20 A. -- that trade was entered -- trade  
21 date the 18th to settle on the 18th, but it was  
22 entered on the 23rd, so that had to be cleared on  
23 the 23rd.  
24 Q. And that's 8.7 billion dollars?  
25 A. Yes.

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2 net amount column, it adds down to 44.9 billion  
3 midway through it, and further down it adds to  
4 45 billion. Do you see that?  
5 A. I do.  
6 Q. Can you tell me why that's the case?  
7 A. I don't know.  
8 Q. If you look in the E/D column, now you  
9 see a lot of entries saying September 30, 2008.  
10 Do you see that?  
11 A. Um-hm.  
12 Q. Were you entering new data on  
13 September 30?  
14 A. No. We changed the end dates.  
15 Q. So E/D is end date?  
16 A. E/D is entry date. But the  
17 modifications were -- we needed to term the trade  
18 early, so they had to modify the original trade  
19 that we booked.  
20 Q. Why did you change the end date?  
21 A. Because it defaulted on the 22nd  
22 instead of the 25th, so we had to change the end  
23 date from the original repo date from the 25th to  
24 the 22nd.  
25 Q. Just so I understand, originally when

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 you booked it, it had an end date of the 25th?</p> <p>3 A. Yes.</p> <p>4 Q. And then on the 22nd, after you</p> <p>5 learned it had defaulted on the 22nd, you changed</p> <p>6 the end date to what?</p> <p>7 A. To the 22nd.</p> <p>8 Q. OK. And why did you do that, just --</p> <p>9 A. Because that was the day that they</p> <p>10 deemed the repo to be in default.</p> <p>11 Q. OK. Now, the values on this, these</p> <p>12 charts, where it says principal amount or even net</p> <p>13 amount, where are those values taken from?</p> <p>14 MR. SHAW: Objection, foundation.</p> <p>15 A. MTS.</p> <p>16 Q. So this is -- these are Lehman values?</p> <p>17 A. Oh, no, no. I am sorry. These are --</p> <p>18 these are all the -- these are the cash trades. I</p> <p>19 booked these trades. I put the cash values on</p> <p>20 these.</p> <p>21 Q. When you say "these," are you talking</p> <p>22 about the --</p> <p>23 A. These groupings of trades that you are</p> <p>24 talking about --</p> <p>25 Q. Right.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. -- were all in relation to the repo</p> <p>3 transaction from the 18th.</p> <p>4 Q. OK. So the 44.9 billion dollars that</p> <p>5 you will see a net amount, it totals to 44.9 in</p> <p>6 the upper half of the chart.</p> <p>7 A. Yup.</p> <p>8 Q. What is that?</p> <p>9 A. That was the cash value of the</p> <p>10 collateral that we were to have given Barclays in</p> <p>11 this transaction, and that was the cash that they</p> <p>12 paid us.</p> <p>13 Q. And why does -- why is it in a</p> <p>14 separate series of entries that total the 45.004</p> <p>15 billion?</p> <p>16 A. I don't recall, to be honest with you.</p> <p>17 As far as my understanding, it was still supposed</p> <p>18 to be 45.</p> <p>19 Q. OK. Ms. Denig, I am going to show you</p> <p>20 two or three exhibits that have been previously</p> <p>21 marked. The first one I am going to give you is</p> <p>22 Exhibit 135. And then I am going to mark as a new</p> <p>23 exhibit a separate document, which we will mark as</p> <p>24 Exhibit 233.</p> <p>25 (Exhibit 233, screen shot marked for</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 identification, as of this date.)</p> <p>3 Q. The two exhibits, 135 and 233, appears</p> <p>4 to be screen shots from what I believe to be your</p> <p>5 MTS system or Lehman's MTS system, and I just have</p> <p>6 a few questions about it after you have had a</p> <p>7 chance to take a look at it.</p> <p>8 A. OK.</p> <p>9 Q. I think this has to do with what we</p> <p>10 just talked about. If you look on Exhibit 135, it</p> <p>11 says end date, 9/25/08. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And I realize there's different</p> <p>14 CUSIPs, but we just took shots of the ones we</p> <p>15 could get a clear shot of.</p> <p>16 When it says 9/25, that's how this was</p> <p>17 originally booked as an end date of 9/25; is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. If you look at Exhibit 233, it looks</p> <p>21 like the end date was changed to 9/19.</p> <p>22 MR. SHAW: Objection, assumes facts</p> <p>23 not in evidence.</p> <p>24 Q. Do you see the entry end date 9/19/08?</p> <p>25 A. Yes.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Was it changed to 9/19? I thought you</p> <p>3 previously said it was changed to 9/22?</p> <p>4 A. It was changed to 9/19 originally</p> <p>5 because that was the date we thought it was going</p> <p>6 to be, and then we found out Barclays defaulted it</p> <p>7 on the 22nd, and we had to modify it again to the</p> <p>8 22nd.</p> <p>9 Q. When was it changed to the 19th?</p> <p>10 A. I don't recall the exact date.</p> <p>11 Q. Could you tell from this chart, in the</p> <p>12 upper right-hand column -- I'm sorry.</p> <p>13 Is there any way to tell from this</p> <p>14 chart when those entries were changed?</p> <p>15 A. From the chart, yes. From here, no.</p> <p>16 Q. Can you tell me from the chart when</p> <p>17 the dates were changed to the 19th?</p> <p>18 A. 23rd.</p> <p>19 Q. So just so I understand it, originally</p> <p>20 the end dates were the 25th?</p> <p>21 A. Yes.</p> <p>22 Q. On the 23rd, you originally changed</p> <p>23 the end dates to the 19th because you thought that</p> <p>24 was the date it defaulted?</p> <p>25 A. Yup. Yes.</p>

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Q. And eventually you were told to change them to the 22nd as the default date?

A. Yes.

Q. Why all these changes?

A. Because the management told us to do it. That Barclays defaulted the repo on the 22nd, not the 19th. We originally thought the default was on the 19th, so that's why we transacted it that way.

Q. Who from Barclays management told you this?

A. Not me personally, so I can't -- my orders came from Jim.

Q. Do you know -- do you have any understanding why all these changes?

A. Nope.

Q. Were you involved in any way in assisting Barclays in preparing its opening balance sheets after the closing of the transaction?

A. No.

Q. Were you involved in any way in assisting Barclays in preparing its financial statements that reflect the Lehman/Barclays

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transaction?

A. No.

Q. Do you have any role now or during the week of the 22nd in providing financial or -- information at all to the folks at Barclays who prepare their financial statements?

A. No.

MR. SHAW: You need to speak up a little bit.

A. No.

Q. So this change was just as a result of -- changes of the end dates were as a result of you being told by Jim Hraska that they wanted it done?

A. Yes.

Q. Did you make any other changes to the -- to this Exhibit 1 -- entries in Exhibit 134 after the closing?

A. This shows a history of all the changes that were made along the way.

Q. So is this a chronological history? In other words, if I read from the top to the bottom, I am going in time?

A. I can't tell based on this. I have to

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flip through it to see.

Q. Could you see whether you can ascertain that.

A. Sure.

Q. Just to clarify the question maybe, we put in blue sheets halfway through, and I'm not sure they are entries on different dates or if you can just tell me.

MR. SHAW: Do you know if this is a complete --

MR. HINE: No, I don't. No, I don't. I am just trying to get a sense of how the system works.

A. As I see it, this is in chronological order, but you definitely don't have a completed list here. And the reason I could tell that is from the entry dates, because there were multiple changes to the original trade booking.

Q. OK. That's what you previously described from originally the 18th and then to the 19th and then to the 22nd.

A. And then to change the money on the trades from 44 to 45 million, so there was multiple modifications to the original trade

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booking.

Q. This is after the closing?

A. Yes.

Q. And other than the changing the forty-four two to 45 billion, were there any other changes made to the valuations of the securities that were transferred to Barclays?

MR. SHAW: Objection.

A. No.

Q. While I am trying to find a couple of exhibits, Ms. Denig, were you involved in any way in the calculation of the 15c3 calculation as it relates to collateral that was being transferred to Barclays?

A. I was not.

Q. Do you have any understanding of how that calculation was changed or modified during the course of the week of the 15th?

A. No.

Q. I see you copied on an e-mail or two involving the 15c3 calculation. Why would you be copied on that?

MR. SHAW: Objection to form.

A. Regularly business as usual, I would

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 be cc'd on what the 15c3 lock-up was going to be</p> <p>3 so we would know how much Ginnie Mae collateral we</p> <p>4 would have to lock up. That was an acceptable</p> <p>5 form of payment or lock-up amount.</p> <p>6 Q. Lock up meaning you couldn't use it</p> <p>7 for any other purposes?</p> <p>8 A. That's correct.</p> <p>9 Q. Is it correct to say you would receive</p> <p>10 periodic reports on what that amount was?</p> <p>11 A. Weekly.</p> <p>12 Q. And during the week of the 15th on</p> <p>13 into the following week, do you recall any</p> <p>14 discussions about redoing that calculation to see</p> <p>15 if we can find any more assets to transfer to</p> <p>16 Barclays?</p> <p>17 A. No.</p> <p>18 Q. Do you recall any efforts at all to</p> <p>19 recalculate the 15c3 amount?</p> <p>20 A. For what time period?</p> <p>21 Q. During those two weeks.</p> <p>22 A. I think they were doing it every day</p> <p>23 at that point.</p> <p>24 Q. Why?</p> <p>25 A. Because of the nature of the issue</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 going on.</p> <p>3 Q. So would you be receiving reports</p> <p>4 every day during that period?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have any understanding of why</p> <p>7 they were doing it every day?</p> <p>8 A. No. No one told me.</p> <p>9 Q. Did you have an understanding of</p> <p>10 whether any assets were ultimately transferred to</p> <p>11 Barclays as a result of changes in the 15c3</p> <p>12 calculation?</p> <p>13 A. I was not aware.</p> <p>14 Q. OK. I want to show you a, several</p> <p>15 spreadsheets, just because I want to understand</p> <p>16 the genesis of what you were doing in the</p> <p>17 different spreadsheets, because we have seen</p> <p>18 dozens of them. I just want to try to get a sense</p> <p>19 of that.</p> <p>20 A. This exhibit, by the way, is a data</p> <p>21 dump into a report writer. So it is -- this is</p> <p>22 the transaction that was booked, this is just a</p> <p>23 reflection of what it looked like in individual</p> <p>24 columns.</p> <p>25 Q. When you're -- we have to make the</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 record clear, you are pointing to Exhibit 233?</p> <p>3 A. 233.</p> <p>4 Q. That's the transaction that was</p> <p>5 actually booked?</p> <p>6 A. Yes.</p> <p>7 Q. That's the screen shot?</p> <p>8 A. Yes.</p> <p>9 Q. And the other exhibit you pointed to</p> <p>10 is 134, and that's what?</p> <p>11 A. That's just the database that housed</p> <p>12 this information, and it was spit out to you in a</p> <p>13 report form.</p> <p>14 Q. So the person entering the transaction</p> <p>15 enters it on the screen similar to those in</p> <p>16 Exhibit 233, right?</p> <p>17 A. No. It goes from a trader input</p> <p>18 screen, this -- and it has throughput to our</p> <p>19 settlement system, which is this.</p> <p>20 Q. So Exhibit 233 is your settlement</p> <p>21 system?</p> <p>22 A. Yes.</p> <p>23 Q. And Exhibit 134 is just a large</p> <p>24 database containing every entry?</p> <p>25 A. Yes.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. OK. Let's mark this.</p> <p>3 (Exhibit 234, document Bates stamped</p> <p>4 10331692 with attachment marked for</p> <p>5 identification, as of this date.)</p> <p>6 Q. Ms. Denig, I am handing you a copy of</p> <p>7 an exhibit marked 234, which is an e-mail stream</p> <p>8 on Friday, the 19th, with an attached spreadsheet.</p> <p>9 My question to you is, do you recall</p> <p>10 this e-mail?</p> <p>11 A. Yes.</p> <p>12 Q. What do you recall about what's going</p> <p>13 on at this time in connection with this e-mail?</p> <p>14 A. They were trying to figure out what</p> <p>15 prices that Lehman had at the time.</p> <p>16 Q. Prices of what?</p> <p>17 A. The market value of the individual</p> <p>18 CUSIPs that were sent to Barclays.</p> <p>19 Q. In connection with the September 18</p> <p>20 repo?</p> <p>21 A. Yes.</p> <p>22 Q. So if you turn to the attachment,</p> <p>23 which is a spreadsheet, were you involved in</p> <p>24 preparing that spreadsheet?</p> <p>25 A. No, I was not.</p>

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Who prepared this?</p> <p>3 A. The technology guy from GFS.</p> <p>4 Q. And do you know what this spreadsheet</p> <p>5 is meant to reflect?</p> <p>6 A. Details of the individual positional</p> <p>7 data, with quantities and prices and the pricing</p> <p>8 sources and what the total market values were.</p> <p>9 Q. Of what pool of securities?</p> <p>10 A. The securities that were sent to</p> <p>11 Barclays.</p> <p>12 Q. So we have talked about a lot of</p> <p>13 different securities. Is this the securities --</p> <p>14 A. That were physically sent to Barclays.</p> <p>15 Q. On the --</p> <p>16 A. 18th.</p> <p>17 Q. When you say sent to Barclays, you</p> <p>18 mean posted into the BoNY account on behalf of</p> <p>19 Barclays in connection with the September 18 repo?</p> <p>20 A. Yes.</p> <p>21 Q. Where does this pricing data come</p> <p>22 from? You will see to the left --</p> <p>23 A. For this, it is GFS. But where GFS</p> <p>24 gets its pricing from, it is multiple sources, and</p> <p>25 that's defined here in the price source column,</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 and then each system, TMS has a pricing hierarchy,</p> <p>3 MTS has a pricing hierarchy.</p> <p>4 Sometimes you see Chase is one of the</p> <p>5 things. That's when there is no price in MTS or</p> <p>6 TMS.</p> <p>7 Q. So most of these prices are coming</p> <p>8 from MTS, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what use, to what use this</p> <p>11 spreadsheet was put?</p> <p>12 A. No.</p> <p>13 Q. Do you recall discussions with</p> <p>14 Mr. Forrest on Friday about the spreadsheet?</p> <p>15 A. No.</p> <p>16 Q. Why is he copying you? Why is he</p> <p>17 sending the copy to you?</p> <p>18 MR. SHAW: Objection, foundation.</p> <p>19 A. I had the relationship with the</p> <p>20 technology folks from GFS.</p> <p>21 Q. So is he asking you to make sure they</p> <p>22 got it right or is he --</p> <p>23 A. He is making sure that they got it not</p> <p>24 particularly right, but that they were able --</p> <p>25 that Bill was able to provide the values.</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Let's mark this.</p> <p>3 (Exhibit 235, document Bates stamped</p> <p>4 10253250 with attachment marked for</p> <p>5 identification, as of this date.)</p> <p>6 Q. Ms. Denig, I am handing you a copy of</p> <p>7 a document marked Exhibit 235, which is an e-mail</p> <p>8 stream from Friday, September 19, also with an</p> <p>9 attachment.</p> <p>10 My -- so my question to you is, have</p> <p>11 you ever seen this e-mail?</p> <p>12 A. I do.</p> <p>13 Q. And what is this?</p> <p>14 A. It was a download from GFS of all the</p> <p>15 individual securities that we physically sent to</p> <p>16 Barclays with what GFS determined is the market</p> <p>17 value.</p> <p>18 Q. So the market value prices on these</p> <p>19 securities were determined by GFS?</p> <p>20 A. Yes.</p> <p>21 Q. And if we look on the first page of</p> <p>22 this, of the attachment, do you see the little</p> <p>23 chart of collateral, market value? Do you see</p> <p>24 that?</p> <p>25 A. Um-hm, yes.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. And so is that -- what does that chart</p> <p>3 reflect?</p> <p>4 A. The market value for the collateral</p> <p>5 that was -- it was Fed deliverable securities like</p> <p>6 U.S. Treasuries, agencies, was worth 28 billion</p> <p>7 based on the information that GFS came up with.</p> <p>8 The collateral that was sent from the DTC</p> <p>9 location, 074, valued 10 million.</p> <p>10 The DTC -- the value of the collateral</p> <p>11 that was in DTC location 636 was worth the</p> <p>12 4 billion, and the TP cash was the 7 billion in</p> <p>13 cash.</p> <p>14 Q. So this totals to 49.9 billion. Is</p> <p>15 that -- does that reflect all the collateral and</p> <p>16 cash that was posted to the September 18 repo?</p> <p>17 A. Not based on Friday, no. This was</p> <p>18 missing data.</p> <p>19 Q. What was it missing?</p> <p>20 A. The stuff we did Friday morning and</p> <p>21 any subsequent data, any other subsequent</p> <p>22 deliveries.</p> <p>23 Q. So as of Friday, this is the amount</p> <p>24 that had been posted to the September 18 repo?</p> <p>25 A. Yup, yes.</p>

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. And when you see --</p> <p>3 A. That little summary was my summary</p> <p>4 based on this information.</p> <p>5 Q. Well, here is my question. I am</p> <p>6 trying to figure out what's the difference between</p> <p>7 Exhibit 235 and Exhibit 234.</p> <p>8 A. What's 235? And 234?</p> <p>9 Q. 234 is the one we previously looked</p> <p>10 at.</p> <p>11 A. I don't think anything. I think it</p> <p>12 was the same stuff. I think I took the same file</p> <p>13 and just made it more in a way that people</p> <p>14 understood what it was. Deleted some columns and</p> <p>15 only included the things I needed.</p> <p>16 Q. Well, it is ten times as thick as</p> <p>17 Exhibit 234. How could it be the same data?</p> <p>18 A. This is the whole file here?</p> <p>19 Q. That's what we received. I don't know</p> <p>20 if it was --</p> <p>21 A. Oh, then this. This is definitely not</p> <p>22 the whole file.</p> <p>23 Q. That was my question.</p> <p>24 A. Yeah.</p> <p>25 Q. So 234 is incomplete?</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. 235, Exhibit 235 is a complete file</p> <p>4 reflecting the collateral that was posted to this</p> <p>5 September 18 repo?</p> <p>6 A. It was a complete file based on the</p> <p>7 stuff that actually physically got delivered, yes.</p> <p>8 Q. As of Thursday --</p> <p>9 A. As of Thursday evening.</p> <p>10 Q. And the 7 billion for TP cash is the</p> <p>11 amount of the box loan that went to that repo?</p> <p>12 A. Yes, it was.</p> <p>13 Q. As to this set of collateral, and I'm</p> <p>14 not talking about stuff that was transferred</p> <p>15 later, as to this set of collateral, did the</p> <p>16 valuation of any of it change over the weekend?</p> <p>17 A. I have no idea.</p> <p>18 MR. SHAW: Objection to form.</p> <p>19 A. I have no idea.</p> <p>20 Q. Because I see --</p> <p>21 A. Just to clarify, like the market</p> <p>22 values that are done here is just based on what we</p> <p>23 are getting spitted out. It is not anything that</p> <p>24 we are determining. It is not anything that we</p> <p>25 are manipulating. It was literally a data dump</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 from our GFS system.</p> <p>3 Q. That's the GFS system that you guys</p> <p>4 use in the regular course of business?</p> <p>5 A. It is.</p> <p>6 But market values, market value is</p> <p>7 only needed to determine exposure with clients,</p> <p>8 not really any other value.</p> <p>9 With repos, it is all about the cash</p> <p>10 that gets actually transferred to and from. So we</p> <p>11 always cared about the physical principal value of</p> <p>12 what was transacted on the day that the trade</p> <p>13 settled.</p> <p>14 Q. I'm not sure I understood that. You</p> <p>15 mean the party receiving the collateral cares how</p> <p>16 much it is worth, they have a haircut associated</p> <p>17 with it?</p> <p>18 A. And they have like an everyday</p> <p>19 exposure calculation that gets done, so that's the</p> <p>20 only thing where market value comes into play.</p> <p>21 Q. Well, this is the market value that</p> <p>22 your GPS system --</p> <p>23 A. GFS.</p> <p>24 Q. GFS system spit out when you asked for</p> <p>25 a list of all the collateral that had been posted</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 to the September 18 repo, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. That's the market value that was</p> <p>5 carried on your system in the normal course of</p> <p>6 business?</p> <p>7 A. For that day, yes.</p> <p>8 Q. And so did you adjust it, did you</p> <p>9 adjust the market value based on the amount of</p> <p>10 cash that was paid for these securities?</p> <p>11 A. I did not touch the market value of</p> <p>12 anything. This is literally a determined field</p> <p>13 that was spit out to us. We didn't touch that.</p> <p>14 Q. I guess I am trying to understand your</p> <p>15 explanation previously about all that matters is</p> <p>16 the amount of cash.</p> <p>17 A. But the cash was booked as 45 billion.</p> <p>18 We delivered everything with zero value. You know</p> <p>19 that.</p> <p>20 Q. So you're saying when you posted the</p> <p>21 transaction, you posted the actual amount of cash</p> <p>22 and ascribed a zero value to the collateral?</p> <p>23 A. That's correct.</p> <p>24 Q. OK. So again just taking this list of</p> <p>25 collateral that you assembled either Thursday</p>



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2 night or Friday morning and not including the  
3 things that were transferred later, right, but to  
4 your knowledge, did this list of collateral change  
5 at all over the weekend?  
6 MR. SHAW: Just so we are clear, you  
7 are indicating Exhibit 235?  
8 MR. HINE: Yes.  
9 MR. SHAW: Objection to form.  
10 A. Why would it -- why and how could it  
11 change? This was physically delivered to the  
12 client.  
13 Q. This list was physically delivered to  
14 the client?  
15 A. Yeah.  
16 Q. By the client, you mean Barclays?  
17 A. Barclays.  
18 Q. Ms. Denig, I see you reference in some  
19 e-mails to something called a depot analysis.  
20 What is that?  
21 A. I don't know, I have to see it.  
22 Q. Do you have a recollection of the term  
23 "TMS depot analysis"?  
24 A. Yes.  
25 Q. What do you recall? While we are

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2 it has a lengthy spreadsheet attached to it.  
3 Have you ever seen this document  
4 before?  
5 A. This is -- this document was provided  
6 to us by the Treasury, Rob Azerad and John Vergel  
7 de Dios, and I just forwarded it to Jim.  
8 Q. And what is your understanding of what  
9 this document is supposed to reflect?  
10 A. Everything we knew in some depot that  
11 was still belonging to LBI.  
12 Q. Depot meaning --  
13 A. Depot.  
14 Q. What is that?  
15 A. Depository -- I don't know how to  
16 explain it to you. Box, they call it boxes.  
17 Q. Does that include the 074 box?  
18 A. Yes.  
19 Q. Does it include the 636 box?  
20 A. Yes, it does.  
21 Q. And any other boxes or possible  
22 location where Lehman could have some securities,  
23 correct?  
24 A. Yes.  
25 Q. So this, does this depot analysis, is

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2 pulling out the chart.  
3 A. It was securities that we were to --  
4 where we thought we were able to determine as  
5 unencumbered, and then a -- give it to the  
6 clearance folks to look into DTC terminals  
7 directly to determine whether or not it was in  
8 fact unencumbered.  
9 Q. So this is in connection with the  
10 search for unencumbered assets that were  
11 eventually going to be transferred to Barclays?  
12 A. Yes.  
13 Q. So just so --  
14 A. I think.  
15 Q. See if I understand. A depot --  
16 A. I don't know, to be honest with you.  
17 I really shouldn't have answered it.  
18 Q. Let me have the document.  
19 (Exhibit 236, document Bates stamped  
20 10328102 with attachment marked for  
21 identification, as of this date.)  
22 Q. Ms. Denig, I am handing you a copy of  
23 a document marked as Exhibit 236, which is a  
24 September 20th e-mail from yourself, and the  
25 subject is "TMS Depot Analysis Detail, Main." And

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2 this the starting point for the effort to locate  
3 unencumbered assets?  
4 A. Yes, it was.  
5 Q. So in other words, whoever was engaged  
6 in that effort would look through these securities  
7 and try to figure out which ones were  
8 unencumbered?  
9 A. Yes.  
10 Q. We have to be careful not to talk over  
11 each other when we are answering questions.  
12 Ms. Denig, I am handing you a copy of  
13 the document previously marked as Exhibit 145B.  
14 If you could take a moment to look at it.  
15 Have you had a chance to look at it?  
16 A. Um-hm.  
17 Q. Have you ever seen this document  
18 before?  
19 A. Yes.  
20 Q. Can you tell me what it is?  
21 A. It is what we determined that night to  
22 be what we felt, based on the information that we  
23 had at the time, to be unencumbered assets.  
24 Q. This is Sunday night?  
25 A. Saturday night to Sunday morning.

<p style="text-align: right;">Page 106</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. So it is Saturday night, September 20?</p> <p>3 A. September 20 to 4:30 in the morning on</p> <p>4 Sunday, the 21st.</p> <p>5 Q. So this, it is entitled "Depot</p> <p>6 Analysis," and who was making the determination</p> <p>7 that you just described?</p> <p>8 A. Do you mean whether these assets were</p> <p>9 available?</p> <p>10 Q. I thought you just said that this is a</p> <p>11 spreadsheet reflecting what you thought as of the</p> <p>12 end of Saturday, the 20th, might be unencumbered</p> <p>13 assets; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Who made that determination?</p> <p>16 A. Jim Hraska, myself and Bill Panneillo.</p> <p>17 Q. And is it in fact -- let me back up.</p> <p>18 If you turn to page 2, you will see a</p> <p>19 small spreadsheet which totals market value of</p> <p>20 1.19 billion. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is that the 1 billion and change that</p> <p>23 you discussed earlier in your testimony that was</p> <p>24 transferred to Barclays on Friday?</p> <p>25 A. No, it was not.</p>	<p style="text-align: right;">Page 107</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. How is this different?</p> <p>3 A. This is in addition to that.</p> <p>4 Q. All right. So this, just so I</p> <p>5 understand the sequence, that 1 billion and change</p> <p>6 is transferred on Friday, and then there is a</p> <p>7 continuing effort to find unencumbered assets</p> <p>8 after that?</p> <p>9 A. Yes.</p> <p>10 Q. This is as of Saturday night, you or</p> <p>11 whoever had determined that there was a</p> <p>12 1.19 billion in unencumbered assets available?</p> <p>13 A. As far as we could tell from the</p> <p>14 information that we had.</p> <p>15 Q. And did you find further unencumbered</p> <p>16 assets later?</p> <p>17 A. I wasn't involved after this, as far</p> <p>18 as trying to locate them. I was involved in</p> <p>19 trying to determine the ones that we felt were,</p> <p>20 and work with settlements to determine whether or</p> <p>21 not they were in fact, but any further</p> <p>22 determination of assets, I was not a part of</p> <p>23 anymore.</p> <p>24 Q. I thought you said you were involved</p> <p>25 up until the 29th and 30th of September?</p>
<p style="text-align: right;">Page 108</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 A. For these.</p> <p>3 Q. For the ones that -- on this chart?</p> <p>4 A. Yes.</p> <p>5 Q. And were these, were these 1.19</p> <p>6 billion in assets eventually transferred to</p> <p>7 Barclays?</p> <p>8 MR. SHAW: Objection, foundation.</p> <p>9 A. I don't know for sure.</p> <p>10 Q. They could have been but you don't</p> <p>11 know either way?</p> <p>12 A. That's right.</p> <p>13 Q. You can't tell from this chart?</p> <p>14 A. No.</p> <p>15 Q. Let's try this.</p> <p>16 (Exhibit 237, document Bates stamped</p> <p>17 10252914 with attachment marked for</p> <p>18 identification, as of this date.)</p> <p>19 Q. Ms. Denig, I am handing you a copy of</p> <p>20 a document marked Exhibit 237, which is an e-mail</p> <p>21 dated September 22, which forwards an earlier</p> <p>22 e-mail in which you are the author and also</p> <p>23 attaches a chart of some -- a spreadsheet of some</p> <p>24 sort.</p> <p>25 After you have had a chance to look at</p>	<p style="text-align: right;">Page 109</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 that, let me know.</p> <p>3 A. OK.</p> <p>4 Q. Have you had a chance to look at that?</p> <p>5 A. I did.</p> <p>6 Q. Have you seen this document before?</p> <p>7 A. I have.</p> <p>8 Q. Can you tell me what it is?</p> <p>9 A. It is a file from BoNY telling us what</p> <p>10 was pledged Friday morning.</p> <p>11 Q. So this chart, this spreadsheet was</p> <p>12 prepared by BoNY?</p> <p>13 A. Yes.</p> <p>14 Q. And the values on here are values that</p> <p>15 BoNY assigned to the securities in question?</p> <p>16 MR. SHAW: Objection, foundation.</p> <p>17 A. I assume so.</p> <p>18 Q. Now, again I'm just trying to</p> <p>19 understand it in terms of all the other pools of</p> <p>20 securities we have been talking about. This is</p> <p>21 what BoNY reports was transferred to its account</p> <p>22 from Lehman on Friday?</p> <p>23 A. Yes.</p> <p>24 Q. Is this -- to your understanding, is</p> <p>25 this the 1 billion plus securities that we talked</p>

<p style="text-align: right;">Page 110</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 about earlier?</p> <p>3 A. Yes.</p> <p>4 Q. Is that the only pool of securities</p> <p>5 that you know of that was transferred on Friday?</p> <p>6 A. Yes.</p> <p>7 Q. OK, OK. Do you know why BoNY was</p> <p>8 sending you this?</p> <p>9 A. We asked for it.</p> <p>10 Q. And what -- why did you want it?</p> <p>11 A. Because we wanted to be able to</p> <p>12 reflect on, through our reconciliation process,</p> <p>13 which securities physically did go to Barclays.</p> <p>14 Q. As to the securities that went on</p> <p>15 Friday morning, was there any difference between</p> <p>16 the pool of securities that BoNY had identified</p> <p>17 and the ones that you thought went?</p> <p>18 A. No, I don't know if I can answer that</p> <p>19 question.</p> <p>20 Q. Well, in the reconciliation -- you had</p> <p>21 a reconciliation process?</p> <p>22 A. Yes.</p> <p>23 Q. After the 22nd, between -- to try to</p> <p>24 reconcile the securities that had been transferred</p> <p>25 in connection with the September 18 repo; is that</p>	<p style="text-align: right;">Page 111</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. And you were involved in that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ultimately successfully</p> <p>7 reconcile all the transfers?</p> <p>8 A. All but five I think.</p> <p>9 Q. And was there a great disparity</p> <p>10 between what BoNY had reported and what Lehman had</p> <p>11 reported?</p> <p>12 A. No.</p> <p>13 Q. So it was fairly straightforward --</p> <p>14 A. It was a three-way rec. It was a rec.</p> <p>15 that BoNY sent us, a rec. that Barclays knew on</p> <p>16 their books and Lehman knew on their books, so it</p> <p>17 was all three reconciled. There was five</p> <p>18 discrepancies originally.</p> <p>19 Q. The scope of the reconciliation was</p> <p>20 the assets that were transferred on the Thursday,</p> <p>21 the 18th, as well as what was transferred on</p> <p>22 Friday, the 19th?</p> <p>23 A. Yes, it was.</p> <p>24 Q. Were there any other transfers that</p> <p>25 were part of that reconciliation?</p>
<p style="text-align: right;">Page 112</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 A. No, there was not.</p> <p>3 Q. So just those two days worth of</p> <p>4 transfers?</p> <p>5 A. Yes.</p> <p>6 Q. I apologize about walking through all</p> <p>7 these spreadsheets, but I am trying to understand</p> <p>8 what happened during that week.</p> <p>9 OK, Ms. Denig, I am handing you a copy</p> <p>10 of an exhibit marked 146B, which is an e-mail with</p> <p>11 several spreadsheets attached to which you were a</p> <p>12 recipient.</p> <p>13 Have you ever seen that document</p> <p>14 before?</p> <p>15 A. Um-hm.</p> <p>16 MR. SHAW: You need to say yes or no.</p> <p>17 A. Yes.</p> <p>18 Q. What is this document?</p> <p>19 A. To be honest with you, right from the</p> <p>20 get-go, we are like what are you talking about?</p> <p>21 We knew five securities being reconciled, so I</p> <p>22 don't know what his list, what he is calling</p> <p>23 Lehman referred to.</p> <p>24 Q. "He" meaning Mr. Azerad?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Do you recall a discussion about</p> <p>3 reconciling 1,165 CUSIPs?</p> <p>4 A. No. I think we alleviated the fact</p> <p>5 that the records that he had was to try to</p> <p>6 determine what he was talking about, because it</p> <p>7 wasn't the reconciliation that we had already</p> <p>8 performed at this particular time, and we were</p> <p>9 reconciled.</p> <p>10 Q. This is September 28, so in your view,</p> <p>11 you and Mr. Hraska had already reconciled the</p> <p>12 transactions from the Thursday and Friday,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. So this is a --</p> <p>16 A. With Barclays, with BoNY, so --</p> <p>17 Q. This is after the fact, Mr. Azerad</p> <p>18 raising an issue?</p> <p>19 A. Um-hm.</p> <p>20 Q. How did it end up?</p> <p>21 A. That I don't recall actually.</p> <p>22 Q. If you turn to behind the first blue</p> <p>23 sheet, you will see a kind of summary spreadsheet.</p> <p>24 Do you see that?</p> <p>25 Do you have an understanding of what</p>

<p style="text-align: right;">Page 114</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 this chart means?</p> <p>3 A. I have a vague recollection of seeing</p> <p>4 it. I don't remember what it was about.</p> <p>5 Q. Does this whole -- is it fair to say</p> <p>6 this whole e-mail proved not to be a very big</p> <p>7 issue and was reconciled in the end?</p> <p>8 A. I would believe so, yes.</p> <p>9 Q. Maybe you could answer me a question</p> <p>10 while we wait for the exhibit. I see -- I am</p> <p>11 fascinated with the titles of the different</p> <p>12 spreadsheets that we see here, and we are trying</p> <p>13 to figure out what they are.</p> <p>14 I see some spreadsheets entitled</p> <p>15 "Book 1" and "Book 2," "Book 3," all the way up to</p> <p>16 Book 10. Do you recall what they were?</p> <p>17 A. Yes. Book 1, when you create a</p> <p>18 spreadsheet and you don't save it with any</p> <p>19 particular name, it will save as Book 1, and if</p> <p>20 you had multiple books open on your machine, it</p> <p>21 will save whatever sequence of numbers there is or</p> <p>22 there are at the time.</p> <p>23 Q. It is not booking transactions, it is</p> <p>24 a name that the system ascribes to it?</p> <p>25 A. Automatically.</p>	<p style="text-align: right;">Page 115</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. OK, I've got you. That is no longer</p> <p>3 an issue in the case anymore.</p> <p>4 Let's mark this.</p> <p>5 (Exhibit 238, document Bates stamped</p> <p>6 BCI-EX4324 with attachment marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. Ms. Denig, I am handing you a copy of</p> <p>9 a document marked 238, which is an e-mail dated</p> <p>10 September 27. The subject is "Fed Collateral with</p> <p>11 Original Face." Take a minute and take a look at</p> <p>12 it.</p> <p>13 Have you had a chance to look at it?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever seen this before?</p> <p>16 A. Um-hm, yes.</p> <p>17 Q. What is it?</p> <p>18 A. The original download that GFS gave or</p> <p>19 when -- Paolo's group was doing the same type of</p> <p>20 reconciliation that we were with the more senior</p> <p>21 folks at Barclays. Mine were with the ops folks</p> <p>22 at Barclays. They -- the file that -- when they</p> <p>23 downloaded it, they didn't include something</p> <p>24 called original face. So when you have a mortgage</p> <p>25 security, you have an original face, and then</p>
<p style="text-align: right;">Page 116</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 there is a factor associated to it, and then a</p> <p>3 current face and then the principal value or</p> <p>4 market value.</p> <p>5 Here our system, the GFS system only</p> <p>6 took in the current face and not the original</p> <p>7 face, or it was a separate column. It was just</p> <p>8 not a column that they deemed -- they took in when</p> <p>9 they did, built the query in GFS.</p> <p>10 Q. Face meaning face value?</p> <p>11 A. Yes, par value or whatever.</p> <p>12 Q. So this was Mr. Tonucci asking you to</p> <p>13 provide him some additional data on the face</p> <p>14 value, the original face values of certain</p> <p>15 securities that he was trying to reconcile?</p> <p>16 A. Yes. So basically they took the</p> <p>17 original list and said, they had a column called</p> <p>18 "Quantity," OK, but the quantity was technically</p> <p>19 current face, which would be the par value times</p> <p>20 any factor, and then that would deposit into the</p> <p>21 column named "Quantity" in GFS.</p> <p>22 So they needed to include "Original</p> <p>23 Face" as the column heading, so I just did it. I</p> <p>24 literally took the same query.</p> <p>25 Q. Do you know why they wanted that?</p>	<p style="text-align: right;">Page 117</p> <p>1 DENIG - CONFIDENTIAL</p> <p>2 A. Because I think that was -- ended up</p> <p>3 being the 1100 discrepancies they had with</p> <p>4 Barclays.</p> <p>5 Q. You are referring to the 1100</p> <p>6 discrepancies on Exhibit 146?</p> <p>7 A. Yes.</p> <p>8 Q. So just to understand this</p> <p>9 reconciliation process, you and Mr. Hraska were</p> <p>10 involved in -- am I correct to say you and</p> <p>11 Mr. Hraska were involved in reconciling between</p> <p>12 the three entities the CUSIPs and actual pool of</p> <p>13 securities that went over?</p> <p>14 A. It was me.</p> <p>15 Q. OK. And did you -- did your</p> <p>16 reconciliation involve at all the pricing for</p> <p>17 those securities?</p> <p>18 A. No, it did not.</p> <p>19 Q. Or valuation of those securities?</p> <p>20 A. It did not.</p> <p>21 Q. Was Mr. Tonucci's crew engaged in a</p> <p>22 reconciliation that had to do with the valuation</p> <p>23 of these securities?</p> <p>24 A. I believe they did.</p> <p>25 Q. And were you involved in that at all?</p>

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. I was not.</p> <p>3 Q. Is it fair to say that you were</p> <p>4 providing data to Mr. Tonucci as he needed it, but</p> <p>5 you weren't involved in reconciling the prices of</p> <p>6 the securities that went over to Barclays?</p> <p>7 A. That's correct.</p> <p>8 Q. Let's mark this, please.</p> <p>9 (Exhibit 239, document Bates stamped</p> <p>10 BCI-EX13384 through 86 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. Ms. Denig, I am handing you a copy of</p> <p>13 a document marked Exhibit 239, which is an e-mail</p> <p>14 stream from September 23, 2008. I will note that</p> <p>15 you are not on this e-mail stream. But I did have</p> <p>16 a question about it.</p> <p>17 In particular, my question is going to</p> <p>18 have to do with the e-mail from Mr. Vergel de Dios</p> <p>19 on the first page.</p> <p>20 Have you had a chance to look at the</p> <p>21 document?</p> <p>22 A. Yup. I don't understand it, to be</p> <p>23 honest with you.</p> <p>24 Q. I just wanted to ask you a question</p> <p>25 about the sentence in the middle of the page where</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 it says, "We do see a large position break which</p> <p>3 leads to the conclusion that there are price</p> <p>4 factor differences between Lehman and Barclays,"</p> <p>5 and then it is followed by a chart. Do you see</p> <p>6 that?</p> <p>7 A. OK.</p> <p>8 Q. Do you see where I am referring to?</p> <p>9 A. The 19 billion you're talking about?</p> <p>10 Q. Well, there is a chart that shows</p> <p>11 position, 92 billion, and then there is a Barclays</p> <p>12 position of 92 billion, and there is a Lehman</p> <p>13 position of 72 billion. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have any understanding of what</p> <p>16 this is reflecting?</p> <p>17 A. I believe it is because they did not</p> <p>18 take into account quantity. They were taking into</p> <p>19 account current value, which is a --</p> <p>20 Q. Who is "they"?</p> <p>21 A. Paolo Tonucci's team.</p> <p>22 When querying the data from GFS, you</p> <p>23 have to define the fields that you are going to</p> <p>24 take in. If they were taking in quantity, it was</p> <p>25 current -- like the definition GFS had was that it</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 was current face and not the original par value.</p> <p>3 In order -- the reconciliation that I</p> <p>4 did was original par value. What they were trying</p> <p>5 to determine included a factor -- the factors,</p> <p>6 which was wrong, which I think they subsequently,</p> <p>7 very quickly realized that.</p> <p>8 Q. So this was --</p> <p>9 A. Based on some communications.</p> <p>10 Q. This eventually became --</p> <p>11 A. A non-event.</p> <p>12 Q. A non-event? OK.</p> <p>13 Were you involved, Ms. Denig, in</p> <p>14 preparing what has been called Schedule A in</p> <p>15 connection with the Barclays/Lehman sale</p> <p>16 transaction?</p> <p>17 A. I was not involved in preparing it,</p> <p>18 no.</p> <p>19 Q. Do you know what it is?</p> <p>20 A. I was under the assumption it was</p> <p>21 regarding the repo transaction or the collateral</p> <p>22 that went in the repo.</p> <p>23 Q. Do you have any other understanding?</p> <p>24 A. No.</p> <p>25 Q. Did you ever hear of anything called</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 the clarification letter in connection with the</p> <p>3 Lehman/Barclays transaction?</p> <p>4 A. No.</p> <p>5 Q. Did you have any understanding that</p> <p>6 Schedule A was a schedule to a clarification</p> <p>7 letter of any kind?</p> <p>8 A. No.</p> <p>9 Q. What is -- would it be fair to say</p> <p>10 that your role in connection with what became</p> <p>11 Schedule A was simply preparing the spreadsheets</p> <p>12 we have been going over?</p> <p>13 A. In most cases I did not prepare them.</p> <p>14 Q. OK.</p> <p>15 A. I received them.</p> <p>16 Q. OK, but -- let me try it this way.</p> <p>17 Other than what you have described for us today as</p> <p>18 to your role during that week, particularly</p> <p>19 Thursday, Friday, on into the following week, did</p> <p>20 you have any role in preparing what later became</p> <p>21 known as Schedule A?</p> <p>22 A. I guess so.</p> <p>23 Q. In what way?</p> <p>24 A. Because I was -- after the</p> <p>25 reconciliations, then we got our files from BoNY</p>

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 as to what they physically received. That is what</p> <p>3 was communicated upstream to management.</p> <p>4 Q. So you were -- wasn't that part of the</p> <p>5 reconciliation process?</p> <p>6 A. Um-hm, yes.</p> <p>7 Q. So BoNY communicated to you what they</p> <p>8 had received, you compared that to what you</p> <p>9 thought you had sent --</p> <p>10 A. Was booked.</p> <p>11 Q. And Barclays compared it to what they</p> <p>12 recorded as well?</p> <p>13 A. That's correct.</p> <p>14 Q. So the net effect, the net result of</p> <p>15 that reconciliation process is a list of</p> <p>16 securities that all parties agreed were</p> <p>17 transferred on either Thursday or Friday of the</p> <p>18 week of the 15th?</p> <p>19 A. That's correct.</p> <p>20 Q. And is it your understanding that that</p> <p>21 becomes Schedule A?</p> <p>22 A. That was my understanding.</p> <p>23 Q. I think we might have asked this</p> <p>24 earlier. Do you have any understanding of what</p> <p>25 Schedule B is to the clarification letter?</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 MR. SHAW: Asked and answered.</p> <p>3 A. No.</p> <p>4 Q. Did you have any role in assembling</p> <p>5 pieces of information for anything that you</p> <p>6 understood to be Schedule B?</p> <p>7 A. No.</p> <p>8 MR. SHAW: Asked and answered.</p> <p>9 Q. A follow-up on a question we had</p> <p>10 earlier. If I could show you a copy of what has</p> <p>11 been previously marked as Exhibit 143B. I'm not</p> <p>12 sure if you have ever seen this before, Ms. Denig,</p> <p>13 but my question has to do with the spreadsheet</p> <p>14 that's attached to this e-mail and whether you</p> <p>15 have ever seen that before.</p> <p>16 Have you ever seen that spreadsheet</p> <p>17 before?</p> <p>18 A. I have.</p> <p>19 Q. What is that?</p> <p>20 A. It was a list given to us by Barclays</p> <p>21 saying that these are the assets they don't want.</p> <p>22 Q. So this is the list of excluded assets</p> <p>23 that you were not allowed to put into the</p> <p>24 September 18 repo?</p> <p>25 A. That's correct.</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Did you ever have any discussions with</p> <p>3 folks at Barclays about why they didn't want those</p> <p>4 assets?</p> <p>5 A. No, I did not.</p> <p>6 (Exhibit 240, document Bates stamped</p> <p>7 BCI-EX18553 with attachment marked for</p> <p>8 identification, as of this date.)</p> <p>9 Q. Ms. Denig, I am handing you a copy of</p> <p>10 an exhibit marked 240, which is an e-mail dated</p> <p>11 Monday, the 29th, from yourself to several people</p> <p>12 with an attached file.</p> <p>13 And after you have had a second to,</p> <p>14 minute to look at it, I want to ask you questions</p> <p>15 about it.</p> <p>16 A. OK.</p> <p>17 Q. Have you ever seen this document</p> <p>18 before?</p> <p>19 A. Yes.</p> <p>20 Q. What is this?</p> <p>21 A. This is the list of CUSIPs that were</p> <p>22 reconciled between Lehman and Barclays as part of</p> <p>23 the 9/18 repo transaction.</p> <p>24 Q. This is -- is this what we previously</p> <p>25 talked about, you had this three-way</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 reconciliation, and this is the agreed-upon list</p> <p>3 of the securities that were transferred on the</p> <p>4 Thursday and Friday of the week of the 15th?</p> <p>5 A. Yes.</p> <p>6 Q. And it says here master file of CUSIP,</p> <p>7 so is this -- is it your understanding that this</p> <p>8 is the final list of the securities that were</p> <p>9 transferred on those two dates?</p> <p>10 A. Yes, it was.</p> <p>11 Q. You see in this chart it says market</p> <p>12 price? Do you see that?</p> <p>13 A. Yup.</p> <p>14 Q. Where did that price come from?</p> <p>15 A. GFS.</p> <p>16 Q. That's the Lehman GFS price?</p> <p>17 A. Yes.</p> <p>18 Q. OK. Thank you.</p> <p>19 Let's mark this, please.</p> <p>20 (Exhibit 241, document Bates stamped</p> <p>21 BCI-EX17607 and 08 with attachment marked</p> <p>22 for identification, as of this date.)</p> <p>23 Q. I am handing you a copy of a document</p> <p>24 marked as Exhibit 241, which is an e-mail from</p> <p>25 Monday, September 29, and an attached spreadsheet.</p>

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2 When you get a chance to look at it, let me know.  
3 I have a question or two about it.  
4 Have you had a chance to look at that?  
5 A. I have.  
6 Q. Have you ever seen this before?  
7 A. Yes.  
8 Q. Could you tell me what it is?  
9 A. It is CUSIPs that we determined to be  
10 unencumbered on the weekend of -- or the 20th,  
11 Saturday, the 20th, and the 21st. This was then  
12 sent to our securities clearance area for them to  
13 determine whether or not in fact they were  
14 unencumbered, and then they went ahead and made  
15 delivery of these.  
16 Q. So this -- am I correct to say this --  
17 you will see the spreadsheet reflects 269 million  
18 dollars worth of securities, correct,  
19 approximately?  
20 A. Market value.  
21 Q. Yes.  
22 A. Yes.  
23 Q. And those securities were, in fact,  
24 transferred to Barclays?  
25 A. As my -- I believe they were.

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2 unencumbered?  
3 A. Yes.  
4 Q. And now, when you see toward the top,  
5 there is an e-mail from Mr. Hraska saying, "Here  
6 is additional collateral from 636 today delivered  
7 by the administrator."  
8 And maybe you have answered this  
9 already. Is this the -- you had previously talked  
10 about a delivery of collateral to Barclays on the  
11 29th, right?  
12 A. Yes.  
13 Q. And so this is the collateral that was  
14 delivered on the 29th, to your understanding?  
15 A. Yes.  
16 MR. HINE: We can take a break for  
17 lunch.  
18 (Recess)  
19  
20  
21  
22  
23  
24  
25

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2 Q. Is this the sum total of the  
3 securities that were found in the 636 box in  
4 connection with the unencumbered, search for  
5 unencumbered assets that we talked about before?  
6 MR. SHAW: Objection to form.  
7 A. Yes, it was.  
8 Q. Do you recall after this whether any  
9 further securities were found in the 636 box?  
10 A. No idea.  
11 Q. No?  
12 You see in the e-mail toward the  
13 bottom, it talks about getting the chill listed on  
14 two CUSIPs. Do you see that?  
15 A. Yes.  
16 Q. What does that refer to?  
17 A. It is an action that DTC takes with  
18 regard to certain securities. If -- when they put  
19 something on a chill, that means that they are  
20 subject to a corporate action. Once the corporate  
21 action is either deemed to not be valid or they  
22 are not going to -- or they have transacted the  
23 corporate action, they take it off of chill and  
24 now it is available for deliveries.  
25 Q. So if the chill is removed, it becomes

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1 DENIG - CONFIDENTIAL  
2 AFTERNOON SESSION  
3 12:48 p.m.  
4 BY MR. HINE:  
5 Q. Good afternoon, Ms. Denig.  
6 A. Good afternoon.  
7 Q. Hope you had a nice lunch.  
8 A. I did.  
9 Q. If you wouldn't mind, I would like to  
10 continue through a parade of a couple of  
11 documents, ask you some questions about them.  
12 Let's mark this as 242.  
13 (Exhibit 242, document Bates stamped  
14 BCI-EX17576 marked for identification, as of  
15 this date.)  
16 Q. I am handing you a copy of a document  
17 marked as Exhibit 242, which is an e-mail dated  
18 September 29th from Mr. Hraska, cc to you. If you  
19 could take a minute and just review it.  
20 A. OK.  
21 Q. Have you had a chance to look at that?  
22 A. Yes.  
23 Q. Have you seen this document before?  
24 A. Yes.  
25 Q. What is this document about?

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2 A. It is just about how we are going to

3 adjust Lehman's books and records for the fact

4 that the defaulted repo no longer exists on their

5 books.

6 Q. Do you see the title or subject talks

7 about balance sheet reduction? What does that

8 mean?

9 A. It means that as a reverse repo or I

10 mean as a repo transaction, because it is a loan,

11 the inventory still sits on the balance sheet of

12 Lehman Brothers. What we are trying to do here

13 is, the fact that Barclays took ownership of those

14 securities due to the defaulted repo, we had to

15 remove those assets from Lehman's books.

16 Q. So this is removing them from Lehman's

17 balance sheet?

18 A. That's correct.

19 Q. Is this part of helping Barclays

20 establish an opening balance sheet for the Lehman

21 assets it has now acquired?

22 A. No. This was strictly on the Lehman

23 side.

24 Q. Did the result of this exercise get

25 somehow translated into Barclays' books?

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2 was completed by early in that week.

3 A. Yes, it was.

4 Q. So what is this referring to?

5 A. I think he was just listing out all

6 the steps that are taken to do this.

7 Q. So that step had been completed by

8 Monday, the 29th?

9 A. It was.

10 Q. Next it talks about unwinding cash

11 only, I guess that means cash only trades in MTS

12 that represent triparty cash total. Do you see

13 that?

14 A. Yes.

15 Q. What does that mean?

16 A. The way that we booked the

17 transaction, where the securities were booked for

18 free for the individual CUSIPs, and we represented

19 the cash via the shell tickets.

20 Q. Um-hm.

21 A. Those are considered the cash only

22 ticket, so they had a problem reconciling to Chase

23 because Chase wasn't giving us certain records as

24 to what the -- all the cash unwinding was about.

25 I wasn't involved in that

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2 MR. SHAW: Objection.

3 A. No.

4 Q. Did you have any role -- I think we

5 might have covered this before. Did you have any

6 role in how Barclays accounted for the

7 transaction?

8 A. No, I did not.

9 Q. Did you have any role in how Barclays

10 accounts for the securities that it acquired in

11 the -- through the September 18 repo?

12 A. No.

13 Q. Do you know how Barclays values the

14 securities that it acquired through the

15 September 18 repo?

16 A. No.

17 Q. You see in this e-mail there is a

18 section called "Fed Eligible Collateral"? Do you

19 see that?

20 A. Yes.

21 Q. The first item talks about reconciling

22 the Fed deliverable securities sent on the 18th.

23 Do you see that?

24 A. Yes.

25 Q. I thought you said your reconciliation

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2 reconciliation. That was done by cash management.

3 Q. So that the cash only trades are the

4 way you booked them in Exhibit 134 that we talked

5 about earlier?

6 A. Yes.

7 Q. Now, unwinding them has to do with

8 problems associated with Chase?

9 A. Yes.

10 Q. And you weren't involved in that?

11 A. I was not.

12 Q. Do you have any understanding of how

13 they are unwound?

14 A. The same way we did ours, just putting

15 the end dates of the 22nd on all the transactions

16 and then reconciling the cash that physically

17 moved from Barclays that came into Chase, and then

18 it is supposed to clear it against the actual

19 securities that we have booked at Lehman.

20 That reconciliation, because it is not

21 a traditional delivery versus payment type of

22 scenario, that they need you to represent that

23 somehow. I don't know how they did their

24 reconciliation, though.

25 Q. You weren't involved in their --



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2 A. I was not. I was involved in just the

3 transfer of assets.

4 Q. Do you have any understanding of the

5 dispute that arose involving Chase over the

6 weekend of the 21st?

7 A. Heard things, but not definitively.

8 Q. What did you hear?

9 A. That they were basically stuck -- they

10 kept all the -- they took ownership of our Lehman

11 box and they were going to try to sell the

12 securities to raise cash, to recoup some of the

13 box loan scenario that they had. Because there

14 was more to it than just the 7 billion. There was

15 an additional -- we were short cash -- Lehman was

16 short cash at the end of that night as well.

17 Q. When you said "they," you were talking

18 about Chase?

19 A. Yeah, yes.

20 Q. That night is Friday night?

21 A. Saturday -- sorry, Thursday,

22 September 18.

23 Q. In addition to the 7 billion dollars

24 box loan that we talked about earlier, Lehman was

25 short cash of an additional amount?

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2 Q. And that came as a surprise to you

3 guys?

4 A. A little bit.

5 Q. How did you learn about that?

6 A. It wasn't until probably in the wee

7 hours of the night that that wasn't done.

8 Q. And what -- do you have any

9 understanding of why it wasn't done?

10 A. No.

11 Q. So what actions did you take to -- I

12 assume the failure to provide that funding caused

13 you folks some troubles, right?

14 A. Yes, it did.

15 Q. What problems did that cause, that

16 night?

17 A. The fact that there was no more cash

18 to collateralize that. Chase was basically short

19 the cash. They had the assets that we had, but we

20 had no cash to back those assets from anybody.

21 Q. So what does that cause?

22 A. Basically the inability to function as

23 a broker/dealer.

24 Q. OK. And so what did you do, what did

25 Lehman do to correct that?

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2 A. Yes.

3 Q. Is that due to the failure of a

4 rollover of a repo that Barclays had previously

5 supplied every night?

6 A. Well, the fact that they provided

7 funding for the additional assets that were in our

8 box, yes, so we didn't have the cash to represent

9 that.

10 Q. Do you know how much cash we are

11 talking about?

12 A. 15 billionish.

13 Q. Just so I can understand it, and there

14 is two separate repos here, a September 18 repo

15 that we have been talking about?

16 A. Yes.

17 Q. And then Barclays had an individual

18 nightly repo starting on Monday, the 15th; is that

19 right?

20 A. Yes.

21 Q. And that's the repo that failed to

22 roll over into Thursday?

23 A. I wouldn't call it failed to roll

24 over. They didn't provide us funding for the

25 additional assets.

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2 A. They took a box loan from Chase.

3 Q. So this is now in addition to the

4 7 billion dollar box loan we talked about earlier?

5 A. Yes, yes.

6 Q. So, and how much was this other box

7 loan?

8 A. I want to say 21 billionish, because

9 there was 5 billion in assets we knew we weren't

10 going to be sending over, and then the 15 billion

11 and change that -- of the repo that we thought we

12 were going to be doing.

13 Q. Just as of Thursday night then, you

14 had a 7 billion dollar box loan in support of the

15 September 18 repo and you had an additional box

16 loan with Chase in the low 20s?

17 A. Um-hm.

18 Q. For just operating capital?

19 A. Yeah.

20 (Exhibit 243, e-mail dated September

21 19, 2008 at 1:43 a.m. marked for

22 identification, as of this date.)

23 Q. Ms. Hraska -- Ms. Denig, I am handing

24 you a copy of a document marked as Exhibit 243. I

25 apologize.

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2 A. That's OK.

3 Q. It is an e-mail dated September 19.

4 If you could take a moment to look at it before I

5 ask you a question.

6 A. OK.

7 Q. Have you ever seen this e-mail stream

8 before?

9 A. Yes.

10 Q. Am I correct in assuming that this

11 e-mail stream is reflecting what we just talked

12 about as far as the need for a box loan?

13 A. Yes.

14 Q. If you look at the top of the first

15 page, Mr. Hraske writes, "Ties out. This is a

16 15.8 tri." Do you see that?

17 A. Yes.

18 Q. That's referring to a 15.8 triparty

19 repo between Lehman, Barclays and --

20 A. Lehman, Barclays.

21 Q. Why is it called a triparty then?

22 A. It is a triparty transaction, to tell

23 you how the trade was transacted -- was papered

24 basically.

25 Q. But there is no custodian?

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2 for speculation, foundation.

3 A. I don't know.

4 Q. You don't know?

5 A. I don't know why they didn't want it.

6 Q. Do you have any understanding of why

7 they didn't want it?

8 A. No.

9 Q. Can you speculate about why they

10 didn't want it?

11 MR. SHAW: Objection, calls for

12 speculation.

13 A. No.

14 Q. No idea why they didn't want it?

15 A. Well, it was Lehman-backed RACER.

16 Q. When I read this e-mail, now back to

17 the e-mail, the box loan was approximately

18 21 billion to cover those two shortfalls, if you

19 will?

20 A. Well, the value, what was deemed the

21 value of the collateral that we still had in the

22 box, that was not funded, meaning that nobody

23 extended us cash to represent that collateral.

24 Q. Maybe I am misunderstanding. The

25 RACER securities were part of the 8 billion

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2 A. Well, Chase is the custodian.

3 Q. OK.

4 A. Sorry.

5 Q. So that's the third party, Chase?

6 A. Well, yeah, yes.

7 Q. So that is the triparty transaction

8 that failed to roll over to the following day on

9 Thursday?

10 A. Yes.

11 Q. When it says RACER 5 billion, do you

12 see that?

13 A. Yes. That was a security that we had

14 on the books and records of Lehman that they

15 definitely did not want?

16 Q. "They" meaning?

17 A. Barclays. That was never going to go

18 to them.

19 Q. RACER securities had been in the Fed

20 program?

21 A. Yes.

22 Q. And Barclays did not want them?

23 A. Did not.

24 Q. Why not?

25 MR. SHAW: Objection to form, calls

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2 shortfall that we talked about earlier?

3 A. No.

4 Q. No?

5 A. No.

6 Q. So we talked earlier about the Fed

7 collateral that was being placed into the

8 September 18 repo, right?

9 A. Yes.

10 Q. And you said there was an 8 billion

11 dollar shortfall, approximately?

12 A. Yes.

13 Q. That does not include the RACER?

14 A. That does not. We substituted all

15 that collateral and made up the difference, so --

16 Q. For what?

17 A. For other types like collateral.

18 Q. Well, wait. I am missing -- I'm

19 mixing things. You substituted collateral for the

20 8 billion shortfall?

21 A. Yes.

22 Q. What did you do about the RACER?

23 A. There was nothing to do. RACER had

24 nothing to do with anything. We were never giving

25 the RACER as part of the transaction. The RACER

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2 was part of the excluded list.  
3 Q. So the RACER was in the Fed program  
4 and just went back into Lehman's box?  
5 A. Yes.  
6 Q. OK. And then the 7 billion dollar box  
7 loan was to make up for the difference between --  
8 it was to make up for what you were unable to put  
9 into the September 18 repo, right?  
10 A. That's correct.  
11 Q. Now, this other box loan that we are  
12 talking about in this e-mail is just to provide  
13 operating funding for Lehman?  
14 A. It's what was left, the collateral  
15 that was left in the box that we did not get any  
16 additional funding for from anybody on the street,  
17 because we didn't have any more liquidity  
18 providers. We didn't have the Fed programs. We  
19 had no more ways to raise cash with the assets  
20 that we had in the box. So technically, Lehman  
21 didn't have any cash.  
22 Q. OK. So you borrowed against the box?  
23 A. Yes.  
24 Q. Approximately 21 billion dollars?  
25 A. Correct.

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2 eventually taken by Chase?  
3 A. That's correct.  
4 Q. So that effectively satisfied that 21  
5 billion dollar box loan obligation?  
6 A. That's correct.  
7 Q. Could you just turn to the last page  
8 of this document. I just want to try to  
9 understand what this e-mail that you are writing  
10 to Mr. Hraska means.  
11 It says, "Jim, the total cash booked  
12 is still 44.2 billion dollars." Do you see that?  
13 A. Yes.  
14 Q. That's the figure we talked about  
15 earlier on the booked amounts chart?  
16 A. Yes.  
17 Q. And it says, "Even though we took the  
18 TIBs out, we replaced it with other collateral,  
19 and I am pretty sure at the end of the day, the  
20 Fed collateral wasn't the problem."  
21 What are you referring to there?  
22 A. Well, being -- at 1:30 in the morning,  
23 they basically said that there is a problem with  
24 the whole transaction that we did after pens were  
25 down. I basically started driving home, I got a

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2 Q. And to what use was that money put?  
3 MR. SHAW: Objection, foundation.  
4 A. I have no idea. What do you mean?  
5 Like -- it was just to collateralize the assets  
6 that we had, to --  
7 Q. Why do you have to do that?  
8 A. You won't be able to operate without  
9 it.  
10 Q. So that's operating funds?  
11 A. They won't be able to make any  
12 deliveries the next day if we didn't have cash to  
13 represent those assets.  
14 Q. Now, that box loan, was that box loan,  
15 the 21 billion dollar one, eventually paid off?  
16 A. They seized all the assets.  
17 Q. Who is "they"?  
18 A. Chase.  
19 Q. So Chase was effectively paid off by  
20 seizing the assets that provided security for that  
21 loan?  
22 A. That's correct.  
23 Q. So those -- so the security,  
24 securities that supported the 15.8 billion dollar  
25 triparty transaction as well as the RACER was

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2 phone call, log on when I get home, don't really  
3 kind of know what's going on at that particular  
4 time. All I know, that there was a problem with  
5 the trade.  
6 So I was basically giving him an  
7 Overview, saying we delivered all the assets from  
8 the Fed -- I have all the delivery settlement  
9 instructions saying that they did go, so it wasn't  
10 the Fed deliverable type of collateral that was  
11 potentially a problem. I didn't know what the  
12 problem was.  
13 At the end of the day we knew we were  
14 short cash, we didn't know how that happened. So  
15 I was saying it wasn't from my bookings.  
16 Q. This is the 7 billion dollar shortfall  
17 you are talking about?  
18 A. No, this is that -- via phone call, he  
19 basically said that there is a problem with -- we  
20 are short cash and we potentially have to take  
21 this 20 billion dollar box loan.  
22 Q. So this relates to the 20 billion  
23 dollar box loan, not the 7 billion dollar  
24 shortfall?  
25 A. No, no. That was all finished at that

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2 particular point.  
3 Q. Is it correct --  
4 A. I went home after that 7 billion was  
5 satisfied.  
6 Q. That's done and now this issue comes  
7 up?  
8 A. Yes.  
9 Q. Is it probably safe to assume  
10 Mr. Hraska was trying to figure out why there was  
11 a shortfall at this time?  
12 A. That's right.  
13 Q. And he wasn't aware of the failure of  
14 the triparty to roll over?  
15 A. We didn't know it didn't roll at that  
16 point, yes.  
17 Q. Any idea --  
18 A. As the e-mails were going on, we were  
19 also on the phone, so there was a few things kind  
20 of going on. So you are missing some context  
21 here.  
22 Q. Did you eventually figure out even  
23 after you went to Barclays why they didn't roll  
24 over that triparty?  
25 A. No.

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2 because they were trying to determine where are we  
3 getting prices from, how a trade is being booked,  
4 based on what prices. The files that we had up  
5 until that point had only been provided to us from  
6 BoNY. We didn't have anything from Chase.  
7 Somebody had made mention from  
8 Barclays that Barclays -- that BoNY's prices  
9 sometimes are not reputable, and I repeated it in  
10 a meeting, and he basically just was e-mailing me  
11 you can't say those types of things at meetings,  
12 as a boss to a junior.  
13 Q. He is --  
14 A. He is my boss. He is just giving me  
15 advice, don't make these generalizations in  
16 meetings with these type of people in it, which  
17 were senior folks.  
18 Q. This is a meeting after -- you're now  
19 working for Barclays?  
20 A. Yes.  
21 Q. And what's the meeting about?  
22 A. It is just, they are trying to -- they  
23 are -- the Treasury folks, which is Paolo Tonucci  
24 and his team, they are trying to come up with a  
25 reasonable price of where they are coming -- you

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2 Q. No? Did you ever say, hey, you guys  
3 caused us a lot of problems, why didn't you do it?  
4 A. At that point we were bankrupt, so we  
5 were employees of Barclays and it was never  
6 really -- it didn't matter anymore.  
7 Q. You never found out subsequently why  
8 it wasn't rolled over?  
9 A. Nope.  
10 (Exhibit 244, document Bates stamped  
11 BCI-EX18095 marked for identification, as of  
12 this date.)  
13 Q. Ms. Denig, I am handing you a document  
14 marked as Exhibit 244, which is an e-mail from  
15 September 24 from Mr. Hraska to yourself.  
16 My question is, have you ever seen  
17 that before?  
18 A. Yes.  
19 Q. Can you -- it says here in the subject  
20 line, he is saying to you apparently that you  
21 don't say that BoNY is not reputable. Can you  
22 give me some context here of what he was talking  
23 about?  
24 A. Yes. We were in a meeting and they  
25 were taking about prices, whose prices were good,

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2 know, to value the assets that they had.  
3 So the -- we were providing them what  
4 our systems were saying and the files that we had,  
5 and they were asking me where did you get the  
6 prices? And I said I got them from BoNY, but I  
7 said I don't know if BoNY's prices are very  
8 reputable.  
9 And when I said that, Jim e-mailed me,  
10 don't say that because I don't know that.  
11 Q. These are the prices for what?  
12 A. Market value of the assets.  
13 Q. Assets that supported the September 18  
14 repo?  
15 A. That's correct.  
16 Q. And BoNY valued them because they had  
17 a custodial role in that transaction?  
18 A. Yes.  
19 Q. And this is -- is this Barclays trying  
20 to figure out how to value these assets?  
21 A. No.  
22 MR. SHAW: Objection.  
23 Q. What is --  
24 A. These were Lehman folks that were  
25 asking the questions.

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2 Q. And why are they trying to determine  
3 the value?  
4 MR. SHAW: Objection to form. Calls  
5 for speculation. Foundation.  
6 A. Why are who? The Lehman folks?  
7 Q. In this meeting. This is  
8 Mr. Tonucci's crew trying to figure out --  
9 A. They are asking from the files that  
10 were sent from me, where did you come up with the  
11 prices, similar to how you are asking, and I was  
12 basically saying BoNY had them. Those are the  
13 prices that BoNY provided.  
14 Q. OK. So these are the securities that  
15 were transferred on Thursday, Friday that week?  
16 A. Yeah. This is the determination that  
17 they came up with the market value, and then I  
18 made that comment, well, BoNY's prices potentially  
19 are not reputable. And he basically said you  
20 can't say that.  
21 Q. Did you think that was true when you  
22 said that?  
23 A. Well, that was what I was -- I know,  
24 and that's basically why I was saying it, because  
25 sometimes I make generalizations without having

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2 A. Yes, based on the -- what Chase came  
3 to us as what the value was to the individual Fed  
4 programs that we had on the previous night.  
5 Q. So those entries are tied to  
6 particular Fed programs?  
7 A. Yes.  
8 Q. For particular days?  
9 A. Yes, they are.  
10 Q. So that's --  
11 A. For a particular day. That was from  
12 September 17. The end of day September 17.  
13 Q. The Fed programs vary from Monday,  
14 Tuesday, Wednesday?  
15 A. Yes. This was end of day Wednesday's  
16 information. I don't know what exhibit it was,  
17 but the one that had sixteen million one, 7.1, and  
18 the total was 44.2.  
19 Q. Right.  
20 A. That was -- that I broke up the  
21 bookings, those ten bookings, based on that file  
22 that they sent me.  
23 Q. So those are Chase prices that you  
24 used in -- into the -- you put that into the MTS  
25 system?

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2 the full facts. Chase was our custodian for 15  
3 years of the company that I have been working for.  
4 BoNY has never been. So how can I make that  
5 general statement about their prices?  
6 Q. You don't know one way or the other  
7 whether their prices were good or bad?  
8 A. No.  
9 Q. Or reputable or not?  
10 A. No.  
11 Q. I asked you a lot of questions about  
12 prices here. Is there any kind of chart or  
13 something that you could point me to that allows  
14 me to reconcile the different prices?  
15 A. That I know was being done like at a  
16 much higher level.  
17 Q. How do you -- for example, on  
18 Exhibit 134, this big thing, you booked the cash  
19 in the transaction, right?  
20 A. Yes.  
21 Q. And you break it down into about eight  
22 or ten different entries, right?  
23 A. Yes.  
24 Q. Is there any valuation that you used  
25 to break it down in that way?

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1 DENIG - CONFIDENTIAL  
2 A. That's correct.  
3 Q. Those are Chase prices?  
4 A. Not Chase prices. It was what Chase  
5 values were. I booked shell tickets to represent  
6 the cash.  
7 Q. I understand, I understand.  
8 So then -- I guess I don't understand.  
9 You have Chase prices on some securities or on  
10 those. You have MTS prices for other securities  
11 that we have talked about during the day. You  
12 have BoNY prices for a different set of  
13 securities.  
14 Which price does Barclays eventually  
15 use when it is booking all this stuff?  
16 MR. SHAW: Objection to form. Calls  
17 for speculation, foundation.  
18 A. I have no idea. Like that was done  
19 way away from us. Our role was to transfer these  
20 par values to this particular place, and that's  
21 what we did. As far as what the market value was  
22 of these, each of these assets, were done at a  
23 much higher level.  
24 Q. Higher level or separate level? I  
25 mean is it in the treasury department at Barclays?

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2 A. Yes. Well, not Barclays. As far as I

3 knew, it was Paolo Tonucci's team that was dealing

4 with whomever at Barclays to come up to an

5 agreement as to what the value of those assets

6 were.

7 Q. Now, you're now working at Barclays

8 and do they have a system like MTS or an analogue

9 to MTS?

10 A. Now?

11 Q. Yes.

12 A. Yes.

13 Q. So the securities that came across

14 from Barclays from the September 18 repo, have the

15 prices changed in the Barclays booking system

16 versus what they were at in the Lehman system?

17 MR. SHAW: Objection, foundation.

18 A. I have no idea because it wasn't part

19 of my role. That's still not part of my role here

20 at Barclays.

21 Q. So you get on -- nowadays at Barclays,

22 you get on and book transactions, right, and do

23 what you used to do?

24 A. No. The way they do it here at

25 Barclays is that there is a separate group that

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2 Q. What do you mean by front, middle and

3 back office, just so I -- I hear those terms all

4 the time.

5 A. Front office represents the traders,

6 salespeople, the people that are licensed that are

7 physically executing the trades.

8 Middle office does the confirmations

9 and ensures that the trades make it from the

10 front-end system to the back-end system.

11 And the back office, it gives you the

12 ability to fix any of the problems that might

13 happen through the throughput.

14 Q. So you are in the middle office?

15 A. I am in the middle office.

16 Q. Can you get on the Sparkly system and

17 see whether the securities that came over from

18 Lehman are priced any different than they were

19 then?

20 A. Well, they booked them the same way we

21 did.

22 Q. Meaning what?

23 A. They booked it as a free security

24 receipt.

25 Q. There is no price in the Barclays

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2 has the ability to type the trades directly into

3 the mainframe, that they only receive information

4 from the front-end system. So the front-end

5 trader system flows down to the back-end system,

6 which is something they call Impact. But we as

7 trade support people are not allowed to have the

8 ability to book directly into the back end.

9 MTS, there was -- infrastructure was

10 very different at Lehman than it is at Barclays,

11 and there was a two-way pipe, so that anytime you

12 did something in one system, it would reflect it

13 back to the front-end system.

14 There is only a one-way pipe here at

15 Barclays, so there is a conflict of interest, and

16 they don't allow us to affect the books and

17 records in the role that we have now.

18 Q. Only the traders at Barclays can

19 affect the books and records?

20 A. And the back office settlements area

21 can book. We are middle office. So we help the

22 traders transact their trades, so they felt it was

23 a conflict of interest, and they don't allow us to

24 be able to go into the system and book anything

25 directly into the system.

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2 system?

3 A. There is no price. They have zero on

4 their trades as well. And they built cash tickets

5 to represent the cash that they paid.

6 Q. So they have the opposite entries that

7 you would have, they have cash going out of

8 45 billion, and then they have all the securities

9 booked at zero price?

10 A. Yes.

11 Q. Is there any way, any document that

12 you could point me to, anything that I could ask

13 your counsel to produce in this case that would

14 let me determine whether a security that was

15 booked on the Lehman system as part of the

16 September 18 repo, what it is now priced at in the

17 Barclays system?

18 MR. SHAW: Objection to form.

19 Foundation, calls for speculation.

20 A. I have no idea. I have no idea how

21 that -- how you would do that. First of all, they

22 probably don't have them anymore, because a lot of

23 them were liquid assets. They are not sitting on

24 our books and records anymore, because they have

25 been sold subsequently.

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Do you know how many of those, of the</p> <p>3 assets that came over from Lehman, have now been</p> <p>4 sold?</p> <p>5 A. No.</p> <p>6 Q. Is there some kind of report generated</p> <p>7 that would show that?</p> <p>8 MR. SHAW: Objection, form. Calls for</p> <p>9 speculation.</p> <p>10 A. Probably, but you would need, you</p> <p>11 would need the list of CUSIPs and someone would</p> <p>12 have to go in and one by one see that.</p> <p>13 Q. So it is theoretically possible to</p> <p>14 trace those securities and see what happened to</p> <p>15 them since they went over to Barclays?</p> <p>16 A. I guess it would be possible.</p> <p>17 Q. Do you know, to the extent securities</p> <p>18 were sold after they -- by Barclays after they</p> <p>19 went over from Lehman, do you know what prices</p> <p>20 they were sold at?</p> <p>21 A. I do not.</p> <p>22 Q. Is there a report or some way to find</p> <p>23 that out?</p> <p>24 MR. SHAW: Objection to form. Calls</p> <p>25 for speculation, foundation.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. I'm sure there is.</p> <p>3 Q. You don't have any knowledge of that?</p> <p>4 A. Nope.</p> <p>5 Q. That's not something that you deal</p> <p>6 with?</p> <p>7 A. We do not.</p> <p>8 Q. Do you know of any programs at</p> <p>9 Barclays to liquidate these securities that they</p> <p>10 just acquired from Lehman?</p> <p>11 A. Not that I am aware of.</p> <p>12 Q. Ms. Denig, I just want to show you a</p> <p>13 couple of spreadsheets now. I'm not sure whether</p> <p>14 you are -- I don't know if they are Lehman</p> <p>15 spreadsheets, Barclays spreadsheets or any other</p> <p>16 entity's spreadsheets. I just want to see if you</p> <p>17 can help me out and try to identify them.</p> <p>18 (Exhibit 245, document Bates stamped</p> <p>19 BCI-EX99802 through 807 and 862 through 865</p> <p>20 marked for identification, as of this date.)</p> <p>21 Q. Ms. Denig, I am handing you a document</p> <p>22 marked as Exhibit 245. And my question is if you</p> <p>23 have ever seen this document before.</p> <p>24 A. I have not.</p> <p>25 Q. Let me describe it for the record. It</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 was marked with the Bates stamps BCI-EX00099802</p> <p>3 through 865.</p> <p>4 Did I hear you correctly you have</p> <p>5 never seen this before?</p> <p>6 A. I have not.</p> <p>7 Q. Did I hear -- can you tell me whether</p> <p>8 it is a Barclays spreadsheet or Lehman</p> <p>9 spreadsheet?</p> <p>10 A. Yes.</p> <p>11 Q. What --</p> <p>12 A. It is a Barclays spreadsheet.</p> <p>13 Q. If you look on the third page, there</p> <p>14 appears to be a series of columns carrying over</p> <p>15 three pages, and on the third page it talks about</p> <p>16 price sold, and then market value, sales. Do you</p> <p>17 see those entries?</p> <p>18 A. Yes.</p> <p>19 Q. Does this appear to be some kind of</p> <p>20 analysis of the sales that they might have made of</p> <p>21 securities after they went from Lehman to</p> <p>22 Barclays?</p> <p>23 MR. SHAW: Objection to form. Calls</p> <p>24 for speculation, foundation.</p> <p>25 A. I couldn't, I couldn't be sure.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Could you speculate about what the</p> <p>3 spreadsheet is?</p> <p>4 MR. SHAW: Same objections.</p> <p>5 A. It could be that or it could be what</p> <p>6 we sold -- what they booked the sale on their</p> <p>7 books at with the default of the repo.</p> <p>8 No, I really wouldn't be able to tell.</p> <p>9 Q. OK. Ms. Denig, I am handing you a</p> <p>10 copy of a document previously marked as</p> <p>11 Exhibit 207, and I wanted to ask you if you have</p> <p>12 ever seen that document.</p> <p>13 Again, just for the record, this is</p> <p>14 document Bates stamped BCI-EX00099493 through 517.</p> <p>15 A. OK.</p> <p>16 Q. Have you had a chance to look at that?</p> <p>17 A. Yes.</p> <p>18 Q. Is this -- have you seen this document</p> <p>19 before?</p> <p>20 A. I have not.</p> <p>21 Q. Can you tell whether it is a Barclays</p> <p>22 or Lehman document?</p> <p>23 A. Yes.</p> <p>24 Q. Which one is it?</p> <p>25 A. Barclays.</p>

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. If you look at the last page, it</p> <p>3 totals to about 5.9 billion dollars in value. I</p> <p>4 wonder if that figure reminds you in any way of</p> <p>5 what this could be about.</p> <p>6 A. Nope. It looks like it was assets</p> <p>7 that went to a PDCF.</p> <p>8 Q. PDCF is a Fed program?</p> <p>9 A. A Fed program.</p> <p>10 Q. So assets that came from PDCF?</p> <p>11 A. No. It looks like ones that probably</p> <p>12 went to PDCF.</p> <p>13 Q. Assets posted as collateral to PDCF by</p> <p>14 Lehman on the 15th?</p> <p>15 A. I think this is Barclays, because</p> <p>16 remember Fed was out of the transaction with</p> <p>17 Lehman, so Barclays basically took the assets and</p> <p>18 then they did a trade with the Fed.</p> <p>19 Q. Can you explain that to me?</p> <p>20 A. So we originally were getting</p> <p>21 liquidity from the Fed via these type of programs.</p> <p>22 When we transferred all the assets from Lehman</p> <p>23 Brothers to Barclays, Barclays then did the trade</p> <p>24 with the Fed.</p> <p>25 Q. Does Barclays still do trades with the</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Fed?</p> <p>3 A. Yes.</p> <p>4 Q. So they still get financing through</p> <p>5 the PDCF?</p> <p>6 A. No, not the PDCF but PSLF.</p> <p>7 Q. So this might relate to that?</p> <p>8 A. Yeah, that's what it looks like.</p> <p>9 Q. Thank you.</p> <p>10 In that regard, were they using the</p> <p>11 same assets that they had acquired from Lehman?</p> <p>12 MR. SHAW: Objection, foundation.</p> <p>13 A. That was my understanding.</p> <p>14 Q. And do you know if they got the same</p> <p>15 haircut that Lehman got?</p> <p>16 MR. SHAW: Objection, foundation.</p> <p>17 A. I have no idea.</p> <p>18 Q. Do you know whose value, valuation</p> <p>19 they used on those assets in posting them to the</p> <p>20 Fed program?</p> <p>21 A. Barclays? No idea.</p> <p>22 Q. Who is their custodian in connection</p> <p>23 with the Fed program?</p> <p>24 A. BoNY.</p> <p>25 Q. BoNY? OK.</p>
Page 164	Page 165
<p>1 DENIG - CONFIDENTIAL</p> <p>2 Do you know how much Fed funding</p> <p>3 Barclays has secured in connection with any of the</p> <p>4 Fed programs?</p> <p>5 A. Currently?</p> <p>6 Q. Yeah.</p> <p>7 A. Not much.</p> <p>8 Q. At any time?</p> <p>9 A. I'm not understanding that question.</p> <p>10 Q. Well, you said, I think you said that</p> <p>11 once Lehman exited the Fed program, Barclays</p> <p>12 itself engaged in securing financing from the Fed</p> <p>13 program, right?</p> <p>14 A. Right.</p> <p>15 Q. Do you know how much Barclays secured</p> <p>16 in that way?</p> <p>17 A. I do not. I don't know what their</p> <p>18 total numbers were.</p> <p>19 Q. Do you have any approximate amounts?</p> <p>20 A. Not at that time. Currently, I know</p> <p>21 what they have currently, which is probably around</p> <p>22 6 billion.</p> <p>23 Q. Was that -- what is -- did Barclays</p> <p>24 use any of the funds that it secured from the Fed</p> <p>25 in connection with the sale transaction between</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Lehman and Barclays?</p> <p>3 MR. SHAW: Objection, foundation.</p> <p>4 A. And I would like you to repeat the</p> <p>5 question. Sorry.</p> <p>6 Q. What did Barclays use the money for</p> <p>7 that it got from the Fed?</p> <p>8 MR. SHAW: Objection, foundation.</p> <p>9 A. I have no idea. I'm not privy to that</p> <p>10 conversation or those conversations.</p> <p>11 Q. Let's mark this one, please.</p> <p>12 (Exhibit 246, document Bates stamped</p> <p>13 BCI-EX108184 through 189 marked for</p> <p>14 identification, as of this date.).</p> <p>15 Q. Ms. Denig, I am handing you a copy of</p> <p>16 a document marked as 246, another spreadsheet. I</p> <p>17 ask you if you had ever seen this before.</p> <p>18 A. I have not.</p> <p>19 Q. Does this appear to be a Barclays</p> <p>20 document?</p> <p>21 A. Yes, it does.</p> <p>22 Q. Do you have any speculation, best</p> <p>23 guess about the purpose of this spreadsheet?</p> <p>24 MR. SHAW: Objection, form, calls for</p> <p>25 speculation, foundation.</p>



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1 DENIG - CONFIDENTIAL  
2 A. No idea.  
3 Q. OK. Could you think of who at  
4 Barclays we should ask about this?  
5 MR. SHAW: Same objection.  
6 Q. Who at Barclays might know what --  
7 A. Might know what the -- what this is?  
8 Q. Yeah.  
9 MR. SHAW: Same objection.  
10 A. Where did you get the file from?  
11 Q. From Barclays.  
12 A. Neal Ullman potentially. I mean  
13 looking at the list, it is all Lehman Brothers  
14 assets. I know that Delta was in default, Solar  
15 Cap was in default. So it could be securities  
16 that they got that they really didn't want.  
17 That's my only speculation.  
18 Q. OK, thank you.  
19 (Exhibit 247, document Bates stamped  
20 BCI-EX108708 marked for identification, as  
21 of this date.)  
22 Q. Ms. Denig, I am handing you a copy of  
23 a document marked Exhibit 247. It is a one-page  
24 spreadsheet.  
25 And my question is if you have ever

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1 DENIG - CONFIDENTIAL  
2 Q. The next column says "Sum of PCG MV."  
3 Do you see that?  
4 A. Um-hm.  
5 Q. Is that a Lehman valuation?  
6 A. It is not.  
7 Q. What does PCG stand for?  
8 A. Product control group. So it would be  
9 Barclays Finance.  
10 Q. PCG is a Barclays entity?  
11 A. Yes, it is.  
12 Q. There was no product control group at  
13 Lehman?  
14 A. There was but this is not a Lehman  
15 doc.  
16 Q. Could that be the valuation from the  
17 Lehman PCG that they are reflecting in the chart?  
18 MR. SHAW: Objection, calls for  
19 speculation, foundation.  
20 A. No idea.  
21 Q. I have seen several charts that talk  
22 about PCG value. Am I understanding you correctly  
23 there is a PCG at Lehman?  
24 A. We didn't call it PCG. Barclays calls  
25 it PCG.

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1 DENIG - CONFIDENTIAL  
2 seen this before.  
3 A. No.  
4 Q. Any idea what this is?  
5 MR. SHAW: Objection to form. Calls  
6 for speculation, foundation.  
7 Q. You can still answer.  
8 A. It is a list of the type of assets  
9 that are still in the box that they, Barclays now  
10 funds.  
11 Q. So when you say that, you mean assets  
12 acquired from Lehman?  
13 A. It doesn't appear to be that.  
14 Q. These are the types of assets that  
15 were acquired from Lehman, where it says asset  
16 type?  
17 MR. SHAW: Same objection, objection  
18 to form, speculation, foundation.  
19 A. There were all these asset types on  
20 the transfer.  
21 Q. The second column says "Sum of P3 Face  
22 Value." Do you see that?  
23 A. Yeah. I don't know what that means.  
24 Q. You don't know what P3 means?  
25 A. No.

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1 DENIG - CONFIDENTIAL  
2 Q. Barclays refers to the Lehman entity  
3 as PCG?  
4 MR. SHAW: Objection.  
5 A. No.  
6 MR. SHAW: Mischaracterizes the  
7 testimony.  
8 Go ahead.  
9 A. The product controllers who are the  
10 people that are employed in the finance division  
11 within Barclays, everybody at Barclays calls that  
12 division PCG, product control group.  
13 Lehman Brothers people, yes, we had  
14 product controllers, but we didn't call them PCG.  
15 We called them something completely different. So  
16 that would be finance group or something to that  
17 effect.  
18 The fact that this is a Barclays  
19 document and says "Sum of PCG Market Value," is  
20 probably market value that they got from their  
21 financial controllers.  
22 Q. But does Barclays refer to the same  
23 function at Lehman as PCG?  
24 A. Yes.  
25 Q. And what is -- what did you guys call

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 that function at Lehman?</p> <p>3 A. Finance.</p> <p>4 Q. Finance?</p> <p>5 A. Yes.</p> <p>6 Q. Is that -- OK. And who runs that?</p> <p>7 A. Who ran it at Lehman?</p> <p>8 Q. Who ran it at Lehman?</p> <p>9 A. The ultimately? It was --</p> <p>10 Q. Yeah.</p> <p>11 A. Ian Lowitt.</p> <p>12 Q. Ian Lowitt. OK.</p> <p>13 You see two columns over it talks</p> <p>14 about liquidity? Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Where it says "Sum of MV-2-22 with</p> <p>17 liquidity." Any idea what liquidity means?</p> <p>18 MR. SHAW: MV-12-22.</p> <p>19 Q. Yes, I am sorry. I am sorry.</p> <p>20 A. Yes, I know what liquidity is. It is</p> <p>21 probably what they actually received in cash for</p> <p>22 those values.</p> <p>23 Q. Did you ever hear of anything called</p> <p>24 the liquidity discount?</p> <p>25 A. No.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. In the valuing of any of the</p> <p>3 securities, did you guys ever apply a liquidity</p> <p>4 discount?</p> <p>5 A. No.</p> <p>6 (Exhibit 248, document Bates stamped</p> <p>7 BCI-EX00107848 through 939 marked for</p> <p>8 identification, as of this date.).</p> <p>9 Q. Ms. Denig, I am handing you a copy of</p> <p>10 what's marked as Exhibit 248, which is marked with</p> <p>11 the Bates stamp BCI-EX00107848 through 7939.</p> <p>12 A. OK.</p> <p>13 Q. My question is, have you ever seen</p> <p>14 this spreadsheet before?</p> <p>15 A. I have not.</p> <p>16 Q. Any idea what this is?</p> <p>17 MR. SHAW: Objection to form, calls</p> <p>18 for speculation, foundation.</p> <p>19 A. It looks like a repo transaction, or</p> <p>20 this -- the desk here is a trading book that</p> <p>21 belongs to the repo desk at Barclays.</p> <p>22 Q. OK.</p> <p>23 A. These could be free collateral that</p> <p>24 they booked.</p> <p>25 Q. When you say it could be free</p>
Page 172	Page 173
<p>1 DENIG - CONFIDENTIAL</p> <p>2 collateral that they booked, in connection with</p> <p>3 what?</p> <p>4 A. Lehman purchase.</p> <p>5 Q. In other words -- well, if you see on</p> <p>6 the top of the first page, it has a total of</p> <p>7 42.1 billion dollars. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Does that suggest any kind of</p> <p>10 connection with the collateral they received from</p> <p>11 Lehman?</p> <p>12 MR. SHAW: Objection to form. Calls</p> <p>13 for speculation. Foundation.</p> <p>14 A. I would agree, yeah, it could have</p> <p>15 been, but there is no way for me to 100 percent</p> <p>16 know that.</p> <p>17 Q. Does this appear to be some Barclays</p> <p>18 booking of the collateral associated with the</p> <p>19 Lehman transaction?</p> <p>20 MR. SHAW: Objection to form.</p> <p>21 A. It does.</p> <p>22 Q. If you turn to page 3, the third page,</p> <p>23 you will see there is a series of columns that</p> <p>24 mention auctions or auction values. Do you see</p> <p>25 that?</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any understanding of what</p> <p>4 that could be talking about?</p> <p>5 MR. SHAW: Objection to form.</p> <p>6 A. I know what an auction is, and when</p> <p>7 you don't have like a price from Bloomberg or any</p> <p>8 other reputable pricing source, they take these</p> <p>9 securities and go out to the street and try to get</p> <p>10 a bid as far as what value and who would take it,</p> <p>11 and these could be -- that's what an auction is.</p> <p>12 But I don't -- I don't know what the prices are,</p> <p>13 or where they come from.</p> <p>14 Q. Do you have any understanding that</p> <p>15 Barclays went out and tried to secure pricing in</p> <p>16 that method, in that manner, in connection with</p> <p>17 the securities they received from Lehman?</p> <p>18 A. I'm not aware that they did that.</p> <p>19 Q. Would you be in a position to have</p> <p>20 heard that if they had?</p> <p>21 A. Yes. Now in my current role, yes.</p> <p>22 Q. And despite holding that position, you</p> <p>23 haven't heard anything to that effect?</p> <p>24 A. Not at that time, no. Not even after.</p> <p>25 Q. How about now?</p>

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1 DENIG - CONFIDENTIAL  
2 A. No.  
3 (Exhibit 249, document Bates stamped  
4 BCI-EX99522 through 532 marked for  
5 identification as of this date.)  
6 Q. Ms. Denig, I am handing you a copy of  
7 a document marked as Exhibit 249, Bates stamped  
8 BCI-EX99522 through 532.  
9 A. OK.  
10 Q. My question is if you have ever seen  
11 that before.  
12 A. I have not, no.  
13 Q. Do you have any idea what it could be?  
14 MR. SHAW: Objection to form. Calls  
15 for speculation. Foundation.  
16 A. I can't be sure, because I don't even  
17 know like what these values are representing, what  
18 denomination, and these are -- they are in  
19 millions, thousands or whatever. So --  
20 Q. You're pointing to something. What  
21 are you pointing to?  
22 A. Just the whole spreadsheet in general.  
23 Q. You're looking at the third page of  
24 this document?  
25 A. Yes, yes.

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1 DENIG - CONFIDENTIAL  
2 acquiring Lehman?  
3 A. No, I have not. This is the first  
4 time I am hearing it.  
5 Q. Do you review Barclays' financial  
6 statements?  
7 A. No. Not recently.  
8 Q. You haven't heard any scuttlebutt  
9 around Barclays about what a great deal the Lehman  
10 acquisition was?  
11 A. No.  
12 Q. No? OK.  
13 A. Was it?  
14 Q. I don't know. I am asking you, have  
15 you heard anything in the hallways, at the water  
16 cooler or anything, people talking about, raving  
17 about the acquisition of Lehman at Barclays?  
18 A. No. No. I seriously haven't.  
19 Q. In the interest of trying not to show  
20 you every document in my collection here, have  
21 you -- you are aware of the master repurchase  
22 agreement that Lehman had with Barclays before  
23 September 15?  
24 A. Yes.  
25 Q. Did you have any role in negotiating

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1 DENIG - CONFIDENTIAL  
2 Q. Do you have any idea what adjusted PCG  
3 value is in the last column?  
4 A. I do not.  
5 Q. So this is a completely foreign  
6 document to you?  
7 A. It is.  
8 Q. Ms. Denig, were you involved in  
9 sending any information to Barclays' auditors  
10 after you have been at Barclays?  
11 A. Not related to this.  
12 Q. Have you ever sent any reports to the  
13 auditors about the value of the securities that  
14 were transferred over from Lehman?  
15 A. No, I did not.  
16 Q. No interaction at all with Barclays'  
17 auditors?  
18 A. No, not with regards to Lehman.  
19 Q. OK. Do you have any idea how Barclays  
20 was able to declare a 4 billion dollar gain on  
21 their acquisition of Lehman?  
22 A. No.  
23 Q. Do you have any -- did you ever hear  
24 anything since you have been at Barclays about how  
25 they were able to declare such a large gain after

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1 DENIG - CONFIDENTIAL  
2 that agreement or making amendments to that  
3 agreement?  
4 A. No.  
5 Q. Did you ever hear anything during the  
6 week of September 15 that that agreement was going  
7 to be amended in any way?  
8 A. Not that I recall.  
9 Q. Do you recall any discussions about  
10 amending any custodial agreements relating to  
11 repos that Lehman was going to enter into with  
12 Barclays?  
13 A. Not that I recall.  
14 Q. Absolutely no discussions at all about  
15 amendments or modifications to any underlying repo  
16 transactional documents; is that fair to say?  
17 A. The only thing that I vaguely  
18 recollect is that they may have adjusted the  
19 schedule of the allowable collateral they could  
20 take.  
21 Q. And "they" meaning --  
22 A. Barclays.  
23 Q. So those --  
24 A. It could be more broad. So when you  
25 set up a triparty arrangement or a repo agreement,

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1 DENIG - CONFIDENTIAL  
2 you identify the type of assets that you will  
3 accept --  
4 Q. OK.  
5 A. -- as collateral.  
6 Q. OK.  
7 A. I think there was an amendment based  
8 on, as you are just seeing it, that they could  
9 amend the allowable collateral that they would --  
10 you know, they could make it more broad range,  
11 which I think --  
12 Q. Do you recall that taking place?  
13 A. I do recall that.  
14 Q. Is that what is called Schedule A to  
15 the MRA?  
16 A. Yes, it is.  
17 Q. And have you ever seen that document  
18 before?  
19 A. A schedule, a Schedule A or --  
20 Q. No, the Schedule A that was amended  
21 that week.  
22 A. I did not, no.  
23 Q. So is it correct to say that your  
24 understanding was that it was amended to allow for  
25 more types of collateral to be posted towards the

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1 DENIG - CONFIDENTIAL  
2 A. I do not know that.  
3 Q. Is that what typically is done in a  
4 Schedule A?  
5 A. I don't think so. Not on the  
6 haircuts.  
7 Q. So it's just --  
8 A. Allowable collateral.  
9 Q. OK. Now, was that done in conjunction  
10 with Barclays preparing an excluded list of  
11 collateral or list of excluded collateral that we  
12 talked about earlier?  
13 MR. SHAW: Objection, foundation.  
14 A. I have no idea.  
15 Q. Not something that you would be  
16 dealing with every day?  
17 A. No.  
18 (Exhibit 250, document Bates stamped  
19 10328232 marked for identification, as of  
20 this date.)  
21 Q. Ms. Denig, I'm handing you a copy of a  
22 document marked as Exhibit 250. It is just a  
23 one-page document dated September 16, which  
24 appears to be an e-mail in which you are involved.  
25 And my question is, first of all, have

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1 DENIG - CONFIDENTIAL  
2 September 18 repo?  
3 A. Yes.  
4 Q. And what was added to the list of  
5 allowable collateral?  
6 A. That I don't know. I don't know what  
7 was originally on the list versus what they added.  
8 I don't know. There is a -- you know,  
9 documentation group handles that.  
10 Q. Who was that?  
11 A. Rob Guglielmo, Lisa-Lynn Boron.  
12 Q. Do you have any sense of whether it  
13 was to allow less secure types of collateral to be  
14 posted?  
15 A. Yes.  
16 Q. Yes, you have an understanding, or  
17 yes, it was?  
18 A. That's my understanding.  
19 Q. That it was amended to allow less  
20 secure types of collateral to be posted than  
21 previously?  
22 A. Yes.  
23 Q. Do you know if the amendment was in  
24 any way to set haircuts for those particular types  
25 of collateral?

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1 DENIG - CONFIDENTIAL  
2 you ever seen this e-mail before?  
3 A. Yes.  
4 Q. And what is this e-mail discussing?  
5 A. It is telling one of my guys to book  
6 the overnight repo with Barclays.  
7 Q. So this is -- is this -- am I correct  
8 in reading this is about 5.5 billion dollars worth  
9 of securities?  
10 A. Yes.  
11 Q. So this was the Tuesday night repo and  
12 they are booking it that night and you're  
13 instructing them to do it?  
14 A. Yes.  
15 Q. This has nothing to do with the  
16 September 18 repo or anything else. This is the  
17 individual nightly repos that Barclays had with  
18 Lehman, correct?  
19 A. Yes.  
20 Q. That is all I have. I just wanted to  
21 understand what that was.  
22 (Exhibit 251, document Bates stamped  
23 102378755 (7 pages) marked for  
24 identification, as of this date.)  
25 Q. Ms. Denig, I am handing you a copy of

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 a document marked Exhibit 251, which is an e-mail,</p> <p>3 and it is -- this is a subject and attachment</p> <p>4 which discusses cash user/generator report.</p> <p>5 So after you have had a chance to look</p> <p>6 at it, my first question is whether you have ever</p> <p>7 seen this before.</p> <p>8 A. Yes.</p> <p>9 Q. Have you had a chance to look at that?</p> <p>10 A. Yes.</p> <p>11 Q. And you have seen this before?</p> <p>12 A. Yes.</p> <p>13 Q. What is this?</p> <p>14 A. It is a document that we used to</p> <p>15 provide to the Lehman traders on trades that would</p> <p>16 have generated cash or used cash based on asset</p> <p>17 type.</p> <p>18 So if we reverse securities in, you</p> <p>19 would be paid a certain value. So if you had</p> <p>20 100 million in and we paid 100 million for it and</p> <p>21 we sold it or repo'd it out for 100 million but</p> <p>22 paid 102, we actually paid out or received in cash</p> <p>23 of 2 percent, and that would be considered a cash</p> <p>24 generator trade.</p> <p>25 Q. OK. You completely lost me there.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. So the traders -- or the traders have</p> <p>3 a business, it is called matchbook trading.</p> <p>4 Q. Is this Mr. Coughlin's group?</p> <p>5 A. Yes, this is Coughlin's financial</p> <p>6 traders.</p> <p>7 Q. OK.</p> <p>8 A. So they would repo or reverse repo in</p> <p>9 certain collateral and then repo out certain</p> <p>10 collateral. And the spread differential on the</p> <p>11 transaction would be how they would make money.</p> <p>12 Q. Right.</p> <p>13 A. So in the event that you borrowed in</p> <p>14 and repo'd out or loaned out the same value of the</p> <p>15 collateral, the cash differential would determine</p> <p>16 whether you were a cash generator or user. So at</p> <p>17 this point it had nothing to do with the assets</p> <p>18 themselves. It had all to do with the cash that</p> <p>19 was generated from these transactions.</p> <p>20 So I will give another example. When</p> <p>21 we buy something, or reverse something in, we buy</p> <p>22 it. So we buy the assets, take in the assets,</p> <p>23 send out cash. We have to pay interest on that</p> <p>24 cash or the customer has to pay us interest on the</p> <p>25 cash that we gave them.</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Then we lend out the same securities,</p> <p>3 and they send us in cash, and whoever we sent that</p> <p>4 to, there is a cash representation there. The</p> <p>5 difference between them would be a cash usage or</p> <p>6 generation, and the difference between the rates</p> <p>7 would be how the traders make their money.</p> <p>8 If the value of the collateral that we</p> <p>9 got in exceeds the value of the collateral that we</p> <p>10 put out, it would be a generator, and vice versa,</p> <p>11 and you would be a user.</p> <p>12 And then there is another unsecured --</p> <p>13 it is considered unsecured cash, which then we</p> <p>14 would have to go try to get -- take it and do</p> <p>15 something else with it, and there is a rate that's</p> <p>16 applied to that.</p> <p>17 Q. So this is not a report that's</p> <p>18 generated within your shop at Lehman?</p> <p>19 A. At Lehman it was. At Barclays it is</p> <p>20 not.</p> <p>21 Q. But it relates primarily to how well</p> <p>22 the traders are doing in either making money on</p> <p>23 the spread or not?</p> <p>24 A. Yes.</p> <p>25 Q. And is it in any way related to the</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 September 18 repo?</p> <p>3 A. It is not.</p> <p>4 Q. So it is --</p> <p>5 A. This is business as usual.</p> <p>6 Q. When I look at the bottom and see</p> <p>7 51 billion dollars in cash on page 2, the fact</p> <p>8 that that's in the ballpark with the numbers we</p> <p>9 are talking about is purely circumstantial?</p> <p>10 A. It is, to the extent that the only</p> <p>11 liquidity providers we had at that particular</p> <p>12 moment was the Fed, and ultimately if that is all</p> <p>13 we had in the Fed, then it makes sense that that's</p> <p>14 what we had.</p> <p>15 Q. Just so I understand what you just</p> <p>16 said, this is Wednesday of that week, so the only</p> <p>17 liquidity provider you have is the Fed who has</p> <p>18 given you approximately 45 billion in cash, right?</p> <p>19 A. Yeah. And then there was other little</p> <p>20 transactions that we had there, here and there.</p> <p>21 Q. Barclays has a repo of about 5 billion</p> <p>22 at that time?</p> <p>23 A. On the end of Tuesday, yes. They get</p> <p>24 increased -- each day it increased. I just don't</p> <p>25 remember what the final -- what the increments</p>

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2 were on a daily basis.  
3 Q. So this report basically models what  
4 Lehman is doing with that cash that all these  
5 liquidity providers are giving it, right?  
6 A. Yes.  
7 (Exhibit 252, document Bates stamped  
8 I0302702 marked for identification, as of  
9 this date.)  
10 Q. Ms. Denig, I am handing you a copy of  
11 a document marked Exhibit 252, which is an e-mail  
12 stream dated September 17, 2008.  
13 My question is, have you ever seen  
14 that document before?  
15 A. I vaguely recollect this e-mail.  
16 Q. Could you just describe for me in your  
17 own terms what this is, what the issue is here in  
18 these e-mails? This is something to do with  
19 intercompany trades?  
20 A. LBI provides the funding for --  
21 provided the funding for a majority of the legal  
22 entities that Lehman owned. When they do the  
23 transactions, they are repo transactions, in order  
24 to fund those securities. So if they are sitting  
25 long in one entity, they would do an intercompany

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2 mention of the fact that Lehman was going to be  
3 selling to Barclays about 70 billion dollars in  
4 assets?  
5 A. No.  
6 Q. Do you recall any mention during that  
7 week or ever having any understanding that  
8 70 billion dollars was the value of Lehman's  
9 assets?  
10 A. I did not hear 70 billion.  
11 Q. Did you ever hear that number used  
12 during this two-week period?  
13 A. No, no.  
14 Q. How about the notion that Lehman was  
15 at 69 billion dollars in liabilities?  
16 A. No.  
17 Q. You never heard that number used  
18 during the two-week period from September 15 on?  
19 A. I did not.  
20 Q. I think I am done with my questions,  
21 so thank you very much. Some of my colleagues I'm  
22 sure will have some more questions for you, and if  
23 I think of any while I am taking a break, I might  
24 come back to ask you, but thank you very much.  
25 MR. HINE: Do we want to take a break?

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2 trade to move the assets over to LBI so they could  
3 get funded via triparty, via repo client,  
4 something like that.  
5 When you do that, do we pay a haircut?  
6 Sometimes we did and sometimes you didn't, and  
7 that would be determined based on the trader at  
8 the time. So sometimes you just did a flat  
9 haircut. They don't really care. It is  
10 intercompany, it is from one pocket to another.  
11 So I think they were trying to  
12 determine, based on the fact that the Holdings  
13 company was now bankrupt, these -- that they  
14 wanted to make sure that any intercompany trades  
15 that were still being transacted, they would  
16 get -- they were paying a haircut on.  
17 Q. And that haircut --  
18 A. Was equivalent to what we were getting  
19 from the Fed.  
20 Q. And was that eventually determined  
21 that that was being done properly?  
22 A. I honestly don't remember. I am  
23 sorry.  
24 Q. OK. Ms. Denig, do you ever recall  
25 hearing early in the week of September 15 any

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2 (Recess)  
3 EXAMINATION BY  
4 MR. OXFORD:  
5 Q. Good afternoon, Ms. Denig. We met off  
6 the record. As you know, my name is Neil Oxford.  
7 I work with Hughes, Hubbard & Reed, and we  
8 represent the SIPA trustee in this action.  
9 Following up on some of the questions  
10 that Mr. Hine asked you, do you recall testifying  
11 about the search for additional unencumbered  
12 assets on the 19th, 20th and 21st of September?  
13 A. It was the 20th and the 21st.  
14 Q. You do not recall looking for  
15 additional unencumbered assets on the 19th?  
16 A. That's correct. We didn't receive the  
17 file until about 4 o'clock on the afternoon on  
18 Saturday.  
19 Q. Which file did you not receive?  
20 A. There was a file, I think it was  
21 labeled "DTC Collateral Analysis" or something  
22 like that in one of the exhibits.  
23 Q. Until you received that file, on the  
24 afternoon of Saturday, the 20th, it is your  
25 recollection that you did not have any involvement

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in a search for additional unencumbered collateral; is that correct?

A. That's correct.

Q. Did you have an understanding of why you were looking for this additional unencumbered collateral?

MR. SHAW: Objection, asked and answered.

A. My impression was that we were -- we had a shortfall in the delivery of the original repo, and we were just trying to find the rest of the -- the collateral to make up the shortfall in market value.

Q. Again, I am a little confused. Is the shortfall in the market value of assets that were delivered -- withdrawn. I'll try that question a better way.

Can you be more specific about the shortfall in the market value of securities that were delivered that you just told me about?

A. Sure. When pens went down on the end of September 18, they came back to us, and who, I'm not really sure who, but saying -- and it was communicated down to us that we were short in the

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value, in I believe the 1.9 billion dollar range.

A billion of it was transferred Friday morning, which we didn't know what the total market value of that was until Monday, the 22nd, but on Saturday, those assets were not reflected in any of the documentation that anybody had at that point, because we didn't receive the file from BoNY until Monday morning.

So Saturday basically we were told to look for -- we were told, tasked to look for 1.9 billion. We kept referring to a billion of it was delivered already, so we were really on the search for 900 million odd.

Q. And your understanding about what you were looking for and why came from conversations with Mr. Hraska; is that correct?

A. Mr. Hraska and Mr. Forrest.

Q. Did anyone ever tell you, Ms. Denig, that one of the reasons that additional collateral was transferred to BoNY on Friday, the 19th, was because Lehman had had to transfer cash as part of the repo?

A. I knew Lehman transferred cash as part of the repo, so I wasn't sure how that was going

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to be reconciled. I thought that potentially Chase and BoNY were kind of discussing that and working that out. I wasn't sure that they -- they segregated that collateral and were going to just deliver it the very next day, if Barclays would have given us the cash -- given Chase the cash back, and then they were given collateral worth that value.

I wasn't sure how they were going to make that whole or whether they were just going to leave it as cash.

Q. When Mr. Hraska testified last week, he told me that the reason additional collateral was transferred on the 19th from Lehman to BoNY for the benefit of Barclays, it was with the intention of releasing some of the cash that had been pledged as part of the September 18 repo. Did Mr. Hraska ever tell that information to you?

MR. SHAW: Objection, form, mischaracterizes Mr. Hraska's testimony.

But you can answer the question.

A. As far as my recollection was, it was to satisfy the shortfall of collateral. How that was -- the 7 billion really didn't come more clear

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to me or people told me about it until later on, but not at that particular time, no.

Q. Have you ever heard at any time that the reason additional unencumbered collateral was moved to BoNY on the Friday, the 19th, was to release the cash that had been transferred as part of the repo on the 18th?

A. I did not.

Q. Do you have in front of you what has previously been marked as Exhibit 237?

A. Yes.

Q. I am also handing you what has previously been marked as Exhibit 150B. I don't think Mr. Hine marked that this morning.

You will see, Ms. Denig, that both Exhibit 237 and Exhibit 150B have attachments; is that right?

A. Yes.

Q. And both the attachments appeared out of the file name TRI09192008.xls?

A. Yes.

Q. But Exhibit 237 appears to be version 3 of a spreadsheet with that same file name; is that correct?

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. OK, OK.</p> <p>3 Q. Do you have any understanding of the</p> <p>4 difference between those two spreadsheets? I am</p> <p>5 obviously not expecting you to go through them</p> <p>6 line by line, CUSIP by CUSIP, but just if you</p> <p>7 could take a moment to look at them and tell me</p> <p>8 whether you have any understanding of the</p> <p>9 difference between the two, if any.</p> <p>10 A. I don't see a difference.</p> <p>11 Q. Just looking for the moment at</p> <p>12 Exhibit 237. Is that the spreadsheet that you</p> <p>13 created?</p> <p>14 A. No.</p> <p>15 Q. It appears to be sent from you to</p> <p>16 Kendall McLaughlin, William Bach and Bob Azerad?</p> <p>17 A. Correct, but I did receive it from the</p> <p>18 Magics technology team. It is either Magics or</p> <p>19 BoNY, to be honest with you. No, it was</p> <p>20 definitely Magics.</p> <p>21 Q. Can you explain what you mean by</p> <p>22 Magics?</p> <p>23 A. Magics is a front-end system that</p> <p>24 would have been the mechanism that we did the</p> <p>25 pledges. So a trader inputs the information in,</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 feeds into a trader system, feeds down to a</p> <p>3 settlement system, and then a delivery is made.</p> <p>4 So according to the front-end system,</p> <p>5 this is what the individual CUSIPs were that were</p> <p>6 sent to BoNY on the 19th, the morning of the 19th.</p> <p>7 And the market value -- where I wanted to see if</p> <p>8 it is different is that the values on the last</p> <p>9 page of both equal the same amount of money, one</p> <p>10 billion eighty.</p> <p>11 One of them is a warrant which they</p> <p>12 didn't want, so I think they ended up delivering</p> <p>13 that back. So in Exhibit 237, you see how the</p> <p>14 last page, you have a total market value of</p> <p>15 1,035,000,000, and then there is this one line</p> <p>16 that says 54 million?</p> <p>17 Q. Um-hm.</p> <p>18 A. And if you look at the file on the</p> <p>19 last page of Exhibit 150, the total value was</p> <p>20 1,090,059,000. If you add up the two, it is the</p> <p>21 same value. So I'm assuming that the information</p> <p>22 is consistent, that it reflects the same</p> <p>23 information.</p> <p>24 Q. OK.</p> <p>25 A. The different version could just be</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 the fact that something, you know, was shuffled</p> <p>3 around a little bit.</p> <p>4 Q. And the market values that you see</p> <p>5 reflected on these two spreadsheets, Ms. Denig, is</p> <p>6 a market value that's assigned by Lehman, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And if I understand your testimony</p> <p>9 correctly, these were CUSIPs that were transferred</p> <p>10 out from Lehman's box of DTC to BoNY for the</p> <p>11 benefit of Barclays on the 19th?</p> <p>12 A. That's correct.</p> <p>13 Q. And do you know whether or not the</p> <p>14 CUSIPs reflected in Exhibits 150B and 237 were</p> <p>15 ever returned to DTC's clearance boxes?</p> <p>16 A. I think this one asset was. I think</p> <p>17 that's why it is highlighted. I'm pretty sure my</p> <p>18 recollection is this was on the excluded list so</p> <p>19 they kicked it back. So in --</p> <p>20 Q. Just so we have a clear record --</p> <p>21 A. In Exhibit 237, you see there was this</p> <p>22 one security, the last page that's highlighted,</p> <p>23 and it is called the warrant, that's the type of</p> <p>24 product it is. Usually that was not something</p> <p>25 that you can go raise cash for. And it had a</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 market value of 54 million. I think that was on</p> <p>3 the excluded list and they did kick it back.</p> <p>4 Q. With the exception of that one warrant</p> <p>5 worth 54 million dollars, is it correct that the</p> <p>6 assets reflected in Exhibit 237 were not held in</p> <p>7 LBI's clearance boxes as of the close of business</p> <p>8 on the 19th of September?</p> <p>9 A. That's correct.</p> <p>10 Q. And is it also correct that, again</p> <p>11 with that one exception of that one line item, the</p> <p>12 54 million dollars, the assets reflected on</p> <p>13 Exhibit 237 were not at any time after close of</p> <p>14 business on September 19 ever included in LBI's</p> <p>15 clearance boxes?</p> <p>16 MR. SHAW: Objection to form,</p> <p>17 foundation.</p> <p>18 A. And I'm not 100 percent sure that</p> <p>19 there weren't other discrepancies, but as of this</p> <p>20 particular moment, when this particular file was</p> <p>21 done, this is the only one that we knew of that</p> <p>22 got kicked back. In subsequent reconciliations</p> <p>23 there could have been others.</p> <p>24 Q. Let me try it this way. As of close</p> <p>25 of business on Friday, with that one exception we</p>



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2 have talked about, the CUSIPs that are reflected  
3 on 237 were not in Lehman's clearance box,  
4 correct?  
5 A. That's correct.  
6 Q. As of Monday morning, again with this  
7 one exception, the CUSIPs reflected on 237 were  
8 not contained in Lehman's clearance boxes,  
9 correct?  
10 A. That's correct.  
11 Q. Thank you. That is all I have for  
12 those documents at the moment, I think.  
13 (Exhibit 253, document Bates stamped  
14 BCI-EX-S-00018190 through 191 marked for  
15 identification, as of this date.)  
16 Q. Ms. Denig, you have in front of you  
17 what has been marked as Exhibit 253, which is a  
18 two-page document I'll identify for the record as  
19 bearing the Bates range BCI-EX-S-00018190 through  
20 91.  
21 If you'd just take a moment to  
22 familiarize yourself with that and let me know  
23 when you have finished doing so.  
24 OK. Do you see below the --  
25 Mr. Hraska's emoticon?

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2 210 in the box and nothing in the other two.  
3 I was telling him in this e-mail that  
4 we already did pledge to him, which isn't  
5 reflected anywhere else in the e-mail, that at 70  
6 million, 210, and that we had additional 200 -- 20  
7 million, 210 in the box.  
8 Q. Do you know at which point these  
9 CUSIPs were pledged to Barclays?  
10 A. For the 70 million, 210, it was done  
11 on -- it could have been done on a combination of  
12 the 18th and the 19th, because ultimately my list  
13 ended up being combined and I only knew of one  
14 list, so I combined those as could have been  
15 delivered on either date. Though we could -- it  
16 could be looked to see where.  
17 Q. And that answered my question with  
18 respect to the 70 million. The 20 million figure?  
19 A. Yes.  
20 Q. Is that the same answer? Was it  
21 pledged on either the 18th or the 19th?  
22 A. No, it was not. It was still as of  
23 September 24 sitting in the DTC box, 22 -- 636,  
24 which is LBI's DTC box location.  
25 Q. At any point did that CUSIP get

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1 DENIG - CONFIDENTIAL  
2 A. Is that what it is called?  
3 Q. I believe so. It is the first time I  
4 have had a chance to say "emoticon" on the record  
5 anywhere.  
6 It is an e-mail from you, Ms. Denig,  
7 to John Rodefled at Barclays, Wednesday, September  
8 24th.  
9 A. Yes.  
10 Q. With a re: line "Just to summarize."  
11 Can you explain to me the context in  
12 which you sent this e-mail to Mr. Rodefled,  
13 please?  
14 A. Yes. Jim asked me to follow up with  
15 the clearance folks to find out if, in fact, we  
16 did pledge this particular CUSIP to Barclays.  
17 They didn't have it on their books anywhere, and I  
18 didn't have it as a discrepancy on my  
19 reconciliation with John.  
20 So we went to the clearance folks, who  
21 was this guy Ed Steffens. He went -- which is the  
22 original one. He said this to Jim, which is  
23 basically a reflection of what was in each box for  
24 these three CUSIPs, so he was saying 074, there  
25 was nothing in the box. In 636 we had 20 billion,

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2 transferred or pledged to Barclays?  
3 MR. SHAW: Objection, foundation.  
4 A. I can't be sure.  
5 Q. To the best of your knowledge, was it  
6 ever pledged or transferred to Barclays?  
7 A. I think so.  
8 Q. And when do you believe it was pledged  
9 or transferred to Barclays?  
10 A. On the 29th or the 30th.  
11 Q. Thank you. That is all I have about  
12 that document.  
13 (Exhibit 254, document Bates stamped  
14 BCI-EX-S-18206 with attachment marked for  
15 identification, as of this date.)  
16 Q. Ms. Denig, I have handed you what has  
17 been marked as Exhibit 254, which is a one-page  
18 e-mail having the Bates range BCI-EX-S-00018206,  
19 and it has an attachment that was produced to us  
20 in native form, and the place holder is  
21 BCI-EX-S-00018207.  
22 My question to you is a simple one,  
23 Ms. Denig: Do you know what this document is?  
24 A. It looks like a dump of information  
25 that was in our DTC boxes as of 9/24 based on what

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1 DENIG - CONFIDENTIAL  
2 GFS knew.  
3 Q. Is there any information in this  
4 spreadsheet that tells you whether the assets are  
5 encumbered or unencumbered?  
6 A. It could be -- you can't be sure based  
7 on this information because it was corrupted after  
8 the 19th, because we didn't get all our records in  
9 from Chase, and there were stock record breaks of  
10 things that were done.  
11 So this information is only as good as  
12 the systems he was retrieving the data from, and  
13 at that time, there were problems.  
14 So on September 24, there was not a  
15 good clean record of what we had in our box  
16 without physically looking in the box.  
17 So based on the best of our abilities,  
18 based on this report, in a regular common  
19 environment, yes, you would be able to tell what  
20 was unencumbered from this report. But this is  
21 not a common environment, and the information that  
22 we had we know was not 100 percent correct.  
23 Q. I am understanding --  
24 A. So if we could determine if anything  
25 was unencumbered, then we would have to look in

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2 for equities and corporate collateral, and they  
3 would be looked in a settlement system called  
4 TMS -- not MTS but TMS. TMS hooked up to DTC,  
5 whereas the MTS sort of hooked up to DTC and  
6 Chase. Here, they didn't.  
7 When you booked a trade in TMS, there  
8 was a trader book that is referenced and a trader  
9 books that began with 931 were to be firm  
10 inventory.  
11 Q. Is TMS a proprietary Lehman system?  
12 A. Yes, it is.  
13 Q. What does TMS stand for?  
14 A. Trade Management System. MTS was  
15 Management Trading System and ITS was  
16 International Trading System. Nothing fancy.  
17 Q. It all sounds pretty fancy to me.  
18 Do you know, Ms. Denig, whether any  
19 securities that are designated with the prefix  
20 "931" were transferred from -- Lehman to Barclays  
21 on the 19th of September 2008?  
22 A. Yes.  
23 Q. You know that CUSIPs with that prefix,  
24 931, were, in fact, transferred?  
25 A. Yes.

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2 DTC to verify, because there was no way to verify  
3 from here.  
4 Q. Do you have an understanding,  
5 Ms. Denig, of why Mr. Panneillo sent you this?  
6 A. Yes.  
7 Q. Tell me what that is, please.  
8 A. I was asked to ask this technology guy  
9 who was in the GFS technology team to provide me a  
10 list of all assets that were in accounts that  
11 began with the prefix of 931.  
12 Q. Does the prefix 931 have any  
13 significance to you?  
14 A. That is supposed to represent firm  
15 collateral.  
16 Q. Is there a reason you qualified your  
17 answer with "supposed to"?  
18 A. No. No, I don't, actually. That is  
19 my -- there is a few exceptions to it, but for the  
20 most part, that would be firm collateral.  
21 Q. Are you aware of any transfers --  
22 withdrawn.  
23 Is 931 a particular location in DTC?  
24 A. No. It was just a range where you  
25 booked the trades in another front end system. So

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1 DENIG - CONFIDENTIAL  
2 Q. Do you know whether securities with  
3 that prefix, 931, were transferred from Lehman to  
4 Barclays subsequent to the 19th of September?  
5 A. Yes.  
6 Q. And were those the transfers on the  
7 29th and 30th of September that you referenced  
8 earlier in your discussions with Mr. Hine?  
9 A. They were.  
10 Q. Thank you. That is all I have for  
11 that exhibit.  
12 (Exhibit 255, document Bates stamped  
13 BCI-EX-S 18278 through 79 with attachment  
14 marked for identification, as of this date.)  
15 Q. Ms. Denig, do you have in front of you  
16 what has been marked as Exhibit 255? Which I will  
17 identify for the record as bearing Bates range  
18 BCI-EX-S-00018278 through 279 and then there is a  
19 four-page spreadsheet which was produced to us in  
20 native form and has no Bates range.  
21 If you could take a moment to look at  
22 both the e-mail and the attachment and let me  
23 know when you have done that and I will ask  
24 some questions for you.  
25 Do you recognize this document,

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Ms. Denig?</p> <p>3 A. I do.</p> <p>4 Q. The initial chain is an e-mail from Ed</p> <p>5 Steffens, is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Did you tell me earlier he works at</p> <p>8 DTC?</p> <p>9 A. He works in clearance but he was a</p> <p>10 manager for DTC clearance.</p> <p>11 Q. When you say he works in clearance --</p> <p>12 A. In Lehman, at Lehman.</p> <p>13 Q. And at the -- this e-mail is dated</p> <p>14 September 25. Had he transferred to Barclays at</p> <p>15 this stage?</p> <p>16 A. He did. He doesn't currently have a</p> <p>17 Barclays role but he is working on the unwind with</p> <p>18 Deloitte &amp; Touche at Barclays though, employed at</p> <p>19 Barclays though.</p> <p>20 Q. Is he part of that ring fence team?</p> <p>21 A. Yes, he was.</p> <p>22 Q. Mr. Steffens writes, "Ricky, we had a</p> <p>23 call this morning surrounding firm assets in 636."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. 636 is a reference to one of Lehman's</p> <p>3 boxes at DTC, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Were you on this conference call?</p> <p>6 A. I don't recall, but most likely.</p> <p>7 Q. Mr. Steffens goes on to say, "There is</p> <p>8 an effort to confirm what those assets are and if</p> <p>9 the positions in the box match up against what we</p> <p>10 know to be firm inventory. A similar exercise was</p> <p>11 done for the 074 box with Jim and Nancy, got a</p> <p>12 file from DTCC of the positions and now that is</p> <p>13 needed for the 636 box. Thanks."</p> <p>14 He goes on, "Nancy, Jim, is that</p> <p>15 essentially what we are looking for."</p> <p>16 Can you explain to me the exercise, to</p> <p>17 the extent you're aware of it, that</p> <p>18 Mr. Steffens is talking about in this e-mail?</p> <p>19 A. So based on the effort that was done</p> <p>20 on the weekend of the 20th and the 21st, we</p> <p>21 identified what we thought or it looked like was</p> <p>22 firm inventory that we would be able to send over</p> <p>23 to Barclays, unencumbered in the box. We needed</p> <p>24 to do an exercise to say take these assets in DTC</p> <p>25 box location 074 and tell me exactly what's in</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 there. We can't be 100 percent sure that the</p> <p>3 records we have were valid, so we needed to</p> <p>4 physically go into the terminal at DTC and tell us</p> <p>5 what's in there.</p> <p>6 So what we determined was -- and I</p> <p>7 think that's what the color coded are, color-coded</p> <p>8 were. It says CUSIPs in yellow, I believe, are</p> <p>9 contra, which -- the reds are no longer in the</p> <p>10 box; greens are additions; and orange, the balance</p> <p>11 is changed; yellows means that you could go.</p> <p>12 Yellow securities are valid.</p> <p>13 Q. OK, what does the phrase "contra</p> <p>14 CUSIPs" mean to you?</p> <p>15 A. How do I explain this? I don't know</p> <p>16 how to explain this to you.</p> <p>17 Q. In terms that I have half a chance of</p> <p>18 understanding.</p> <p>19 A. Let's see. How do I explain this.</p> <p>20 Let me see if I can determine which ones they are.</p> <p>21 I can't explain that to you in a way</p> <p>22 that would make any sense.</p> <p>23 Q. I hesitate to say this, do you want to</p> <p>24 try me?</p> <p>25 A. It is a CUSIP that DTC -- let's see,</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 how do I -- I don't even know. I can't answer the</p> <p>3 question. I am sorry. I don't know how to -- how</p> <p>4 to -- contra CUSIPs?</p> <p>5 MR. SHAW: Can you give us a</p> <p>6 definition of what the words "contra CUSIP"</p> <p>7 or the phrase "contra CUSIP" means to you?</p> <p>8 Not in context of this document, just</p> <p>9 generally.</p> <p>10 THE WITNESS: I know I am trying to</p> <p>11 think.</p> <p>12 MR. SHAW: Use whatever technical</p> <p>13 language you need to use and he can ask for</p> <p>14 explanations if he doesn't understand.</p> <p>15 A. I honestly can't find the words to</p> <p>16 describe it. I can't answer the question. I am</p> <p>17 sorry.</p> <p>18 Q. Well, why don't we come back to it.</p> <p>19 A. We will come back to that. It will be</p> <p>20 bothering me so.</p> <p>21 Q. If at any point during the rest of my</p> <p>22 questions the definition comes back to you, feel</p> <p>23 free to hold up your hand and blurt it out.</p> <p>24 A. See, so for red, the red ones we said,</p> <p>25 our files showed that they were in the box, but</p>

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2 when we went to actual DTC terminal, they were  
3 not, that's why it says red ones are no longer.  
4 Green CUSIPs are stuff that were deemed to be in  
5 the box that we didn't have in the original file,  
6 and the orange, the balance is changed from what  
7 we knew from JFS to the end.  
8 Q. What do you mean when you use the  
9 phrase in that last answer "original file"?  
10 A. The file that was given to us on  
11 Saturday evening, on September 20.  
12 Q. The one that was marked as an exhibit  
13 by Mr. Hine?  
14 A. Yes.  
15 Q. I forget the exhibit number, but we  
16 are talking about the same thing?  
17 A. Yes, um-hm.  
18 Q. If you can put that to one side and  
19 when we come back to contra CUSIPs, we can pick it  
20 up.  
21 (Exhibit 256, document Bates stamped  
22 BCI-EX-S-1824I marked for identification, as  
23 of this date.)  
24 Q. Ms. Denig, you have in front of you  
25 that I have marked as Exhibit 256, a one-page

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2 to somebody else. So those are still sitting in  
3 our box that is owned by LBI but is not available  
4 for delivery.  
5 Also, if there is a corporate action  
6 pending on a particular CUSIP, that would also be  
7 segregated out where we wouldn't be able to make  
8 delivery. And then there is another type where if  
9 there is a stock record break on the any of the  
10 positions, they would also freeze it so you  
11 couldn't make delivery. So if there were any  
12 pending adjustments that potentially would affect  
13 the position in that box, you couldn't send it.  
14 So there is a total position that  
15 wasn't seg'd. which was available and then  
16 there is the total position overall that would  
17 include stock record breaks, wealth client  
18 assets, and prime broker. Prime broker  
19 positions, in essence, not ours, they are not  
20 our positions.  
21 Q. Was part of the analysis of the CUSIP  
22 with the 931 prefix, was part of that analysis to  
23 determine whether or not those assets were truly  
24 unencumbered?  
25 A. Yes.

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1 DENIG - CONFIDENTIAL  
2 e-mail were the Bates range is BCI-EX-S-0001824I.  
3 If you would take a moment to look at that and let  
4 me know when you're ready.  
5 A. OK.  
6 Q. This appears to be an e-mail  
7 discussion about the same spreadsheet that was  
8 attached to what I marked as Exhibit 255. Does  
9 that seem accurate?  
10 A. It seems accurate.  
11 Q. And just -- I think I have one  
12 question only with respect to this document. In  
13 the chain just below where you are copied, you  
14 will see that someone called Marielena Russo  
15 writes to Ed Steffens asking if he wants the  
16 available or total positions. Do you see that?  
17 A. Um-hm, yes.  
18 Q. Do you have an understanding of what  
19 that means?  
20 A. Yes. So in the DTC box location that  
21 is owned by LBI, we also have a prime service  
22 business and a wealth business that would just be  
23 a segregated position that -- but is owned by  
24 somebody else. We don't have the legal rights to  
25 use that collateral. It is locked up to be given

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2 Q. And I think we have a clear record on  
3 it, but can you explain to me whether or not you  
4 and the team you worked on did anything to  
5 determine whether or not those assets were  
6 unencumbered other than look into DTC boxes?  
7 A. No, we just looked in the DTC boxes.  
8 Q. And when you say you looked in the DTC  
9 boxes, can you explain in a little more detail  
10 what you mean by that?  
11 A. So the people that are referenced  
12 here, Steffens and Marielena, they worked in the  
13 clearance area of Lehman Brothers or Barclays at  
14 the time. And she had access to a DTC terminal  
15 that's tied into the actual custodian of DTC and  
16 they looked to see what the available positions  
17 were referencing. If you put the CUSIP in the DTC  
18 box location, you would be able to tell what it  
19 is. There is certain codes within the clearance  
20 screens that tell you if it is available or if it  
21 is seg'd or if it is a break, if it is a corporate  
22 action. There are specific codes on there so you  
23 are able to -- you determine by the DTC screens  
24 what the real position is.  
25 Q. You made reference a couple of times

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2 today, Ms. Denig, that the quality of the  
3 information in Lehman's systems over the week  
4 following the filing of the holding company  
5 bankruptcy on the 15th carrying through I think  
6 the weekend of the 20th and 21st of September was  
7 imperfect.  
8 A. It didn't get imperfect until the  
9 18th.  
10 Q. OK, thank you for the clarification.  
11 From the 18th through the 22nd, the information in  
12 Lehman's systems was imperfect, correct?  
13 A. Yes.  
14 Q. Was the information in DTC's systems  
15 about the assets in Lehman's boxes also imperfect?  
16 A. No. That's why we went to them as a  
17 second check.  
18 Q. Can you explain to me why DTC's  
19 systems didn't suffer from the same imperfections  
20 as Lehman's internal systems?  
21 A. Because Chase, who is our custodian  
22 who handled the deliveries from our Chase box to  
23 DTC's boxes, didn't provide us the files necessary  
24 to determine whether or not the assets were even  
25 there, were there. DTC now received them from

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1 DENIG - CONFIDENTIAL  
2 received any files from Chase. So the only way to  
3 really determine if the assets were there were  
4 from looking into the boxes directly. And we  
5 didn't get access to DTC right away either. It  
6 took us until like the middle of the week in order  
7 to get it because we were now Barclays employees  
8 and they were LBI's boxes. So we needed somebody  
9 to approve that.  
10 Q. How was it, Ms. Denig, that you and  
11 the others who were working with you were able to  
12 identify to any unencumbered collateral at DTC's  
13 boxes over the weekend?  
14 A. Experience in the firm, experience on  
15 the Lehman infrastructure, experience on how the  
16 trades were executed and the nature of what all  
17 the trade codes mean.  
18 Q. Are you able to estimate the degree to  
19 which you were correctly able, over the weekend of  
20 the 20th and 21st, to identify securities that  
21 were, in fact, unencumbered at DTC?  
22 A. Were unencumbered you said? They were  
23 easy to -- more easy to determine because we  
24 didn't touch them. Let's -- let me put it another  
25 way. If it was a segregated position, it was

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1 DENIG - CONFIDENTIAL  
2 Chase. Chase was our main -- like our generator  
3 of all our information. So they sent us the  
4 position files of anything they would have done  
5 via pledging securities, delivering securities on  
6 behalf of Lehman Brothers. The fact that we did  
7 not receive any files on the night of the 18th and  
8 the 19th from Chase definitely screwed up our  
9 records.  
10 Q. Do you know at what point DTC received  
11 the information from Chase that you at Lehman did  
12 not?  
13 A. DTC is an actual depository and is a  
14 true reflection of what securities are sitting in  
15 there. Same as Chase was. And the only way to  
16 get the information is to get the reports from  
17 them.  
18 We didn't get reports from DTC. We  
19 got all of our reports and files from Chase. That  
20 would be up loaded to our stock record and then  
21 would tie to the boxes, the individual boxes, and  
22 that was -- like the back office would do that  
23 type of reconciliation on a daily basis.  
24 After the 19th, we couldn't do that  
25 reconciliation because the fact that we never

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2 never on any list to be going over; therefore,  
3 even if we didn't receive any files from Chase,  
4 the positions were there.  
5 Q. Right, I think we are talking past  
6 each other a little bit. I'm sure it is me asking  
7 a bad question.  
8 Let's try it this way. Over the  
9 weekend with others in your team, you were  
10 tasked with identifying unencumbered collateral  
11 within DTC's boxes, correct?  
12 A. Yes.  
13 Q. And you were hampered in that effort  
14 by Chase's failure to send over certain important  
15 data as to transactions affecting those  
16 securities, correct?  
17 A. That's correct.  
18 Q. Nevertheless, you managed to  
19 accomplish some sort of conclusion as to the  
20 existence and extent of unencumbered collateral in  
21 Lehman's DTC boxes over that weekend of the 20th  
22 and 21st, correct?  
23 A. Yes.  
24 Q. You later appeared to have undertaken  
25 an effort to reconcile that with the true records

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 at DTC, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. How close did you get over the</p> <p>5 weekend?</p> <p>6 A. Oh, well, we had -- we thought we</p> <p>7 identified about 900 something million and I think</p> <p>8 it was 485 million that was actually good.</p> <p>9 Verified.</p> <p>10 Q. So 50?</p> <p>11 A. Fifty percent.</p> <p>12 Q. And that 900 million, just so we are</p> <p>13 clear, that you believe you identified is over and</p> <p>14 above the -- what you described as the billion and</p> <p>15 change that was transferred ostensibly under the</p> <p>16 repo on the 19th, correct?</p> <p>17 A. Yes.</p> <p>18 MR. SHAW: Objection to form.</p> <p>19 A. Yes.</p> <p>20 (Exhibit 257, document Bates stamped</p> <p>21 BCI-EX-S-18293 through 294, with attachment,</p> <p>22 marked for identification, as of this date.)</p> <p>23 Q. Ms. Denig, I have placed in front of</p> <p>24 you what I have marked as 257 which is identified</p> <p>25 for the record as BCI-EX-S-00018293 through 294,</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 294 is a place holder for the attachment which was</p> <p>3 produced in native form.</p> <p>4 Ms. Denig, have you had a chance to</p> <p>5 look at 257?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize that document?</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell me what it is, please.</p> <p>10 A. After those steps taken when we were</p> <p>11 looking at one file from GFS, asked the clearance</p> <p>12 folks to determine whether or not we didn't have,</p> <p>13 in fact, have the assets in the box and this was</p> <p>14 the ultimate result which was on page 4 of this</p> <p>15 document.</p> <p>16 Q. By page 4 of the document, are you</p> <p>17 referring to the page following?</p> <p>18 A. Yes.</p> <p>19 Q. 18294?</p> <p>20 A. Yeah.</p> <p>21 Q. That's has some headings at the top,</p> <p>22 CUSIP, what I am assuming is security description?</p> <p>23 A. Correct.</p> <p>24 Q. S&amp;P Moody quality and Lehman market</p> <p>25 value?</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 A. That's correct.</p> <p>3 Q. For the record, that is a spreadsheet</p> <p>4 that has a total in the last column of</p> <p>5 269,921,368?</p> <p>6 A. Correct.</p> <p>7 Q. Ms. Denig, you write to Mr. Hraska,</p> <p>8 Monty Forrest and Neal Ullman, if my math is</p> <p>9 right, at 3 o'clock eastern on the 25th of</p> <p>10 September. "OK, this should be everything in 636</p> <p>11 and 074. No issues on 636 collateral. All not</p> <p>12 highlighted. Can do." Do you see that?</p> <p>13 A. Yes, very grammatically incorrect, but</p> <p>14 yes.</p> <p>15 Q. I don't think anybody writes</p> <p>16 grammatically correct e-mail these days.</p> <p>17 A. I was tired.</p> <p>18 Q. When you say, "This should be</p> <p>19 everything in 636 and 074," what do you mean?</p> <p>20 A. Everything we could have determined</p> <p>21 was good to go to Barclays. Based on the assets</p> <p>22 that we were able to determine were unencumbered</p> <p>23 and after the verification that we had with the</p> <p>24 clearance folks, this was my e-mail to my bosses</p> <p>25 saying go ahead, you can deliver these. These</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 guys then had other steps and Jim and Monty had to</p> <p>3 go through other steps getting certain approvals,</p> <p>4 getting other people involved, and they were</p> <p>5 basically hounding me all day to get me this list</p> <p>6 so that's kind of where it comes from, like OK,</p> <p>7 this should be everything. At that time. That's</p> <p>8 the whole thing. On this particular day, based on</p> <p>9 the information that we did already, based on the</p> <p>10 assets that we were able to determine, this is</p> <p>11 everything that should be able to go.</p> <p>12 Q. When you say no issues on 636</p> <p>13 collateral, what do you mean?</p> <p>14 A. Everything we determined in 636, there</p> <p>15 were no issues with the availability of that</p> <p>16 collateral.</p> <p>17 Q. I notice you don't tell Mr. Hraska</p> <p>18 that there are no issues with 074.</p> <p>19 A. Um-hm.</p> <p>20 Q. Was that --</p> <p>21 A. That is why I said on the highlighted</p> <p>22 ones will go, so the ones that are highlighted had</p> <p>23 issues.</p> <p>24 Q. And they were part of the 074 box at</p> <p>25 DTC, is that right?</p>

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1 DENIG - CONFIDENTIAL  
2 A. Yes.  
3 OK, thought of a way to describe  
4 contra CUSIP.  
5 Q. OK, the whole table is on the edge of  
6 its seat.  
7 A. It is an identifier that DTC would  
8 use, but it is not a street CUSIP that's used. So  
9 another shop can have a different name for it  
10 basically, but DTC would have a generic one.  
11 So it is different from a regular  
12 CUSIP where it is a street CUSIP, everyone uses  
13 the same one. We can call it something and  
14 somebody else could call it something  
15 different. There is no -- those are hard to  
16 determine are they real or not. That's why we  
17 didn't put them in the list to go and they were  
18 highlighted we need further investigation on  
19 it.  
20 I don't know how to explain it. It is  
21 very hard to explain. They are dummy CUSIPs in  
22 essence. How it that.  
23 Q. Did you say dummy CUSIPs?  
24 A. Dummy, they are not street-used  
25 CUSIPs.

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1 DENIG - CONFIDENTIAL  
2 these could go, these can go right now. The  
3 others need to be more -- investigated a little  
4 bit further.  
5 Q. When you say they were saying get us  
6 the list, who is the they?  
7 A. Monty and Jim and Alastair.  
8 Q. Alastair is Alastair Blackwell?  
9 A. Yes.  
10 Q. And did you have any understanding of  
11 why they were so impatient to receive your list?  
12 A. I was assuming that Barclays was  
13 impatient in receiving the assets.  
14 Q. Is it your understanding that the  
15 CUSIPs listed in Exhibit 257 were not part of any  
16 repo transaction?  
17 Withdrawn, withdrawn. Let me ask a  
18 better question. Is it your understanding that  
19 the securities listed in Exhibit 257 that you  
20 are saying are good to go, presumably to  
21 Barclays, yes?  
22 A. Yes.  
23 Q. Were not part of the repo transaction  
24 on the 18th and 19th of September?  
25 A. See, I still -- me, personally still

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1 DENIG - CONFIDENTIAL  
2 Q. Are you aware of whether or not any of  
3 the contra CUSIPs that were referred to in this  
4 earlier exhibit were ever transferred from Lehman  
5 to Barclays?  
6 A. It is not my -- I have no idea. I  
7 don't know for sure.  
8 Q. Do you have an understanding of what  
9 the issues were with the highlighted entries on  
10 the spreadsheet marked as Exhibit 257?  
11 MR. SHAW: Objection, compound.  
12 A. And there was a reference earlier in  
13 another exhibit, ones that were highlighted in  
14 certain colors. Here, in Exhibit 255. Where we  
15 say CUSIPs in yellow I believe would be contra;  
16 red are no longer in the box; green are in  
17 additions; and orange is balances, we didn't want  
18 to muddy the waters. We just wanted the pure and  
19 simple clean ones, based on the records that we  
20 had versus records that DTC had, and anything that  
21 needed further research and I guess the time was  
22 of the essence because, again, they are basically  
23 saying get us the list, get us the list, get us  
24 the list. So they needed information quickly and  
25 so these were done, we knew that these were there,

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2 thought that this was the true-up piece of the 1.9  
3 billion. This was my understanding at the time  
4 still. Again, no -- I didn't have any idea about  
5 the schedule B thing, but this was still trying to  
6 determine that 1.9 billion that they asked us to  
7 find that night. So still all in relation to  
8 that.  
9 Q. Have you subsequently come to a  
10 different understanding with respect to whether or  
11 not these securities are part of the repo or not?  
12 A. Yes.  
13 Q. Can you tell me from whom you gained  
14 that understanding?  
15 A. Jim Hraska.  
16 Q. And what did Jim Hraska tell you?  
17 A. That there is a schedule B out there.  
18 Q. And did he tell you about the schedule  
19 B that was out there?  
20 A. They were to get all unencumbered  
21 assets and not just the repo.  
22 Q. When did you have that conversation  
23 with Mr. Hraska?  
24 A. I can't be sure of the exact date.  
25 But it was after this.

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. And by this, you mean after the date</p> <p>3 of --</p> <p>4 A. September 25. September 25, 2008.</p> <p>5 Q. The securities listed in 257 total,</p> <p>6 according to Lehman's marks, just south of 270</p> <p>7 million, is that correct?</p> <p>8 A. That's correct. Yes.</p> <p>9 Q. Was this 270 million a portion of the</p> <p>10 450 million, the approximately half that you ended</p> <p>11 up determining?</p> <p>12 A. Yes.</p> <p>13 Q. That's a terrible question.</p> <p>14 A. But I understand what you are saying.</p> <p>15 Q. You testified earlier that you</p> <p>16 believed of the 900 million in additional</p> <p>17 unencumbered collateral that you and your team</p> <p>18 identified over the weekend of September 20 and</p> <p>19 21st, your subsequent reconciliations confirmed</p> <p>20 that approximately half, in the region of 450</p> <p>21 million, turned out to be truly unencumbered,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And is this 260.9 million that's</p> <p>25 referenced in Exhibit 257 part of that 450</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 million?</p> <p>3 A. Yes, it is.</p> <p>4 (Exhibit 258, document Bates stamped</p> <p>5 BCI-EX-S 16935, with attachment, marked for</p> <p>6 identification, as of this date.)</p> <p>7 Q. Ms. Denig, you have in front of you</p> <p>8 what I have marked as Exhibit 258 which is an</p> <p>9 e-mail bearing the Bates range BCI-EX-S-00016935</p> <p>10 and it has an attachment which is one page. Do</p> <p>11 you recognize this document?</p> <p>12 A. I do.</p> <p>13 Q. Can you tell me what it is please?</p> <p>14 A. It is the assets in 636 that were</p> <p>15 being delivered, that we were telling Barclays</p> <p>16 that you're getting.</p> <p>17 Q. And the assets in 636, are those the</p> <p>18 same 269.9 million dollars worth of collateral</p> <p>19 that you had told Mr. Hraska was unencumbered and</p> <p>20 OK to send to Barclays in Exhibit 257?</p> <p>21 A. Yes.</p> <p>22 Q. Do you see in the second paragraph of</p> <p>23 his e-mail to John Rodefled, Mr. Hraska says, "In</p> <p>24 addition can you provide the market value of the</p> <p>25 DTC collateral taken in by yourselves on 9/19/08.</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 We want to compare to our figures and evaluate for</p> <p>3 additional requirements."</p> <p>4 Do you know whether Mr. Rodefled or</p> <p>5 anyone else at Barclays ever provided information</p> <p>6 in response to that request from Mr. Hraska?</p> <p>7 A. I don't recall.</p> <p>8 Q. OK, that is all I have for that</p> <p>9 exhibit.</p> <p>10 (Exhibit 259, document Bates stamped</p> <p>11 BCI-EX-S18485 through 486 marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q. Ms. Denig, you have in front of you</p> <p>14 what I have marked as Exhibit 259 which has the</p> <p>15 Bates range BCI-EX-S-00018485 through 486. Do you</p> <p>16 recognize this document?</p> <p>17 A. I do.</p> <p>18 Q. Focusing in particular on the e-mail</p> <p>19 from John Haley at Barclays to Jim Hraska, which</p> <p>20 is the penultimate entry in the chain, Mr. Haley</p> <p>21 writes, "Jim, can you take a look at these CUSIPs</p> <p>22 on Monday. BoNY has said they returned these to</p> <p>23 you on 9/19." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Can you tell me if you know what</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Mr. Haley is asking Mr. Hraska to do?</p> <p>3 A. Yes. On 9/18, we were reflecting them</p> <p>4 on our books and records or reflecting them as a</p> <p>5 pledge that we sent them. It is one of -- there</p> <p>6 is four -- these four discrepancies were part of</p> <p>7 the reconciliation that we did. Upon further</p> <p>8 reconciliation on their part, they went to BoNY</p> <p>9 and said Lehman says they delivered them to you,</p> <p>10 and BoNY came back and said oh, no, we DK'd them,</p> <p>11 meaning the next day, meaning we didn't know them,</p> <p>12 and we kicked them back to the box.</p> <p>13 We still at this particular moment</p> <p>14 didn't show that. They have references on when</p> <p>15 BoNY released the shares back to Lehman at 636,</p> <p>16 but I -- it is not seen in this, but at the end</p> <p>17 of the day, we looked and said DTC and we</p> <p>18 didn't see the same reflection they told us.</p> <p>19 Remember, they were five CUSIPs in</p> <p>20 question. These four of them were -- four of</p> <p>21 the five were these that we had issues with.</p> <p>22 Q. Those were the five CUSIPs that were</p> <p>23 referenced I believe in an exhibit that was marked</p> <p>24 I think had been created by Mr. Azerad?</p> <p>25 A. Yes.</p>



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<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. Were these transfers to BoNY transfers</p> <p>3 made out on the 18th?</p> <p>4 A. They were. And you can see here like</p> <p>5 this is technically a screen shot from a DTC</p> <p>6 terminal or their DTC terminal saying that this</p> <p>7 was paid to Lehman, 636 pledge, to BoNY's 855 at</p> <p>8 this particular time on 9/18. Then they come back</p> <p>9 and say on 9/19, BoNY released these shares to</p> <p>10 Lehman 636 at 231.</p> <p>11 Lehman didn't take them in. So they</p> <p>12 could have released them to it, but we never --</p> <p>13 like the boxes, 636 never took the securities</p> <p>14 in. So this basically went back to them for</p> <p>15 further review. It is almost like saying here,</p> <p>16 throw the ball, and you are throwing it right</p> <p>17 back to me and that's basically what happened</p> <p>18 with these. BoNY threw them to us and we</p> <p>19 kicked them back.</p> <p>20 Q. So the CUSIPs that are listed in</p> <p>21 Exhibit 259, the four sets of CUSIPs were rejected</p> <p>22 by BoNY on the 19th?</p> <p>23 A. No. Well, they were -- they were</p> <p>24 accepted on the 18th, they took it into their box,</p> <p>25 and on the 19th, they tried to deliver them back</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 to Lehman's LBI box, 636. Lehman never took them</p> <p>3 in.</p> <p>4 Q. So they were not, these four CUSIPs</p> <p>5 were not in Lehman's clearance box?</p> <p>6 A. They did not go to Lehman's box.</p> <p>7 Q. On the 19th?</p> <p>8 A. On the 19th.</p> <p>9 Q. Are you aware if they went to Lehman's</p> <p>10 clearance box any time after the 19th?</p> <p>11 A. They were not and that has</p> <p>12 subsequently come out in other reconciliations</p> <p>13 they just basically had incomplete data. You had</p> <p>14 this, this, and one showing that Lehman went back</p> <p>15 to them and then they kept them.</p> <p>16 Q. Thank you. That is all I have for</p> <p>17 that.</p> <p>18 (Exhibit, 260ationu , document Bates</p> <p>19 stamped BCI-EX-S-18577 through 78 marked for</p> <p>20 identification, as of this date.)</p> <p>21 Q. Ms. Denig, you have in front of you</p> <p>22 what I have marked as Exhibit 260 which is a</p> <p>23 two-page e-mail, BCI-EX-S-00018577 through 78. If</p> <p>24 you can just let me know when you have had a</p> <p>25 chance to review that. Do you recognize this</p>
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<p>1 DENIG - CONFIDENTIAL</p> <p>2 document?</p> <p>3 A. I have a.</p> <p>4</p> <p>5 Vague recollection., Can you tell me what</p> <p>6 your vague recollection is, please?</p> <p>7 A. That they supposedly got, received</p> <p>8 money from, that was for LBI and they didn't know</p> <p>9 what it was for.</p> <p>10 Q. And who is the "they"?</p> <p>11 A. They, I am sorry, Barclays operational</p> <p>12 folks said that they received cash from Chase that</p> <p>13 particular night and they didn't know why. Jim is</p> <p>14 reaching out to Dan and Craig who are on the</p> <p>15 Treasury area or were in the Treasury area of</p> <p>16 Lehman, now are in the Treasury area of Barclays.</p> <p>17 Q. Did you ever understand that there was</p> <p>18 a final resolution as to the reason why these</p> <p>19 funds had been received from Chase?</p> <p>20 A. No.</p> <p>21 Q. That is all I have for that document.</p> <p>22 (Exhibit 261, document Bates stamped</p> <p>23 BCI-EX-S-18505 and 06 with attachment marked</p> <p>24 for identification, as of this date.)</p> <p>25 Q. Ms. Denig, you have in front of you</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 what I have marked as Exhibit 261, which is a</p> <p>3 two-page e-mail BCI-EX-S-00018505 to 506. And</p> <p>4 then there is a very substantial spreadsheet,</p> <p>5 probably two spreadsheets attached to it. Do you</p> <p>6 recognize this document?</p> <p>7 A. I don't, believe it or not. I don't</p> <p>8 remember this.</p> <p>9 Q. At the bottom of the e-mail chain,</p> <p>10 someone called Duane McLaughlin writes to a large</p> <p>11 group of people, not to you at this stage. He</p> <p>12 says, "Attached please find two files which</p> <p>13 include what Barclays believes should be included</p> <p>14 on schedules A and B. Please reflect conversation</p> <p>15 with Paolo over the weekend and we believe are</p> <p>16 agreed between Barclays and Lehman." He goes on</p> <p>17 to say at the bottom, "Please provide your</p> <p>18 sign-off on these files as soon as possible so</p> <p>19 they can be filed under seal with the bankruptcy</p> <p>20 court in the morning." Do you see that?</p> <p>21 A. Um-hm.</p> <p>22 Q. And do you see then Mr. Tonucci</p> <p>23 forwards this to Mr. Azerad?</p> <p>24 A. Um-hm.</p> <p>25 MR. SHAW: Say yes.</p>

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2 A. Yes.  
3 Q. Saying, "Can you check this  
4 correspondence to our version of the schedules."  
5 Do you see that?  
6 A. Yes.  
7 Q. Do you know what Mr. Tonucci is  
8 referring to as "our version of the schedules"?  
9 A. No.  
10 Q. He says, "I believe there are some of  
11 differences, open (five CUSIPs that didn't make it  
12 and five that seem to be replacements)." Do you  
13 see that?  
14 A. Yes.  
15 Q. Do you believe those are the five  
16 CUSIPs you testified about earlier?  
17 A. Yes.  
18 Q. Mr. Azerad sends this e-mail on to you  
19 about 29th of September at 1:39 in the afternoon  
20 GMT, so 9:39 in the morning.  
21 A. Um-hm.  
22 Q. Do you have an understanding of why  
23 Mr. Azerad forwarded this document to you?  
24 MR. SHAW: Objection, foundation.  
25 A. Knowing that I was the one that did

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2 correct?  
3 A. It could have been.  
4 Q. You said in an answer to one of  
5 Mr. Hine's questions that you recall receiving a  
6 spreadsheet that you believed to be schedule B  
7 from Mr. Hraska, is that correct?  
8 A. Yes.  
9 Q. And I think I wrote down that what you  
10 did with it was play around with it. Can you be a  
11 little more precise?  
12 A. He wasn't very Excel savvy. So  
13 sometimes he would send me spreadsheets and I  
14 would cut them up for him and send them back so he  
15 could see what he was working with. He would say  
16 here is a file, fix -- cut out just 931 accounts  
17 and, you know, put just include this range, just  
18 include these type of securities that begin with  
19 these three letters. He doesn't know how to do  
20 that, so he would give me instructions on what to  
21 do with it.  
22 There was a set to determining and the  
23 same with the unencumbered assets that we worked  
24 on that weekend, there was a particular method  
25 that we used to try to pertain -- to know what it

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1 DENIG - CONFIDENTIAL  
2 the reconciliation with Barclays, is potentially  
3 why he sent it to us, though he seemed to have  
4 done his own reconciliation. And as far as  
5 schedules As and Bs, I didn't -- I just knew of  
6 schedule A really and that there was a B being  
7 constructed.  
8 Q. Do you recall doing any -- withdrawn.  
9 You don't recall after reading this  
10 e-mail again receiving it?  
11 A. I don't recall, no. Obviously I did,  
12 but I don't remember. I don't remember it.  
13 Q. Is it safe then to assume that you did  
14 not -- you don't recall doing any work on or  
15 analysis of the file that was attached to this  
16 e-mail?  
17 A. No. I do remember getting a file --  
18 but it is not what's referenced here -- from him  
19 with Barclays' positions and Lehman's positions on  
20 it and my same discrepancies he had as  
21 discrepancies, but that doesn't seem to be this  
22 file. That's what I thought it was at first but  
23 I'm not sure it was.  
24 Q. The file you remember receiving was a  
25 document marked by Mr. Hine this morning, is that

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2 is and that's based on knowing what the CUSIPs  
3 are, what the trading accounts are within Lehman  
4 Brothers, certain descriptions from -- for  
5 collateral and there were certain subtypes that we  
6 knew to exclude and not to exclude and he was  
7 doing -- he went on further to determine what the  
8 schedule B was with Paolo Tonucci and Azerad and  
9 John Virgel del Dios which I was not doing  
10 anymore, he was doing with them. Once in a while,  
11 he would send me a spreadsheet to play with, to  
12 sort in essence.  
13 Q. So I am clear, it is your  
14 understanding that Mr. Hraska along with  
15 Mr. Tonucci and the other individuals you  
16 mentioned were working on a spreadsheet that you  
17 believed to be called schedule B, is that correct?  
18 A. Yes.  
19 Q. And that at Mr. Hraska's direction,  
20 you manipulated that spreadsheet?  
21 A. I wouldn't say manipulated. I just  
22 sorted it in a different way. I didn't touch  
23 anything or delete any columns. I just literally  
24 shifted the -- shifted things around a little bit.  
25 Q. So the presentation of the data was --

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1 DENIG - CONFIDENTIAL  
2 A. Was more favorable for him. He had  
3 columns, he had filters, upon filters, upon  
4 filters.  
5 Q. But you, yourself did no independent  
6 analysis or editing or manipulation of this  
7 document?  
8 A. No. Or yes.  
9 Q. Let me ask it a better way. Did you,  
10 other than following instructions of Mr. Hraska,  
11 do anything that with this spreadsheet that you  
12 believed to be called schedule B?  
13 A. No.  
14 Q. Ms. Denig, the last document, at least  
15 from me, I have handed you what has previously  
16 been marked as Exhibit 155B. Can you take a  
17 moment to review both the spreadsheet that's  
18 attached to the e-mail and the e-mail itself and  
19 let me know when you have done that, please.  
20 A. OK.  
21 Q. Actually independent of this document,  
22 I have one more general question. The securities  
23 of 1 billion and change that has been much  
24 discussed today that were transferred on the 19th  
25 from Lehman to BoNY for Barclays, did you

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2 Q. When you say you have made all  
3 deliveries and satisfied that, do you mean to say  
4 that it is your understanding that 1.95 billion of  
5 additional collateral had been moved to Barclays?  
6 A. Yeah, but actually, the last page says  
7 362 didn't go.  
8 Q. And you're looking at the last page of  
9 the spreadsheet that has the heading summary of  
10 collateral moved, is that correct?  
11 A. Yup.  
12 Q. The column "MV" stands for market  
13 value, is that correct?  
14 A. Yes.  
15 Q. Do you have an understanding of  
16 whether market value here reflects Lehman's market  
17 value or Barclays' value?  
18 A. I don't know. I'm assuming it is  
19 Lehman's.  
20 Q. And what's the basis for that  
21 assumption, Ms. Denig?  
22 A. Because the two -- I see the 269 and  
23 the 161 were the market values of -- Lehman had  
24 determined and in subsequent files that we looked  
25 at today. Like this one. Like the one before

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1 DENIG - CONFIDENTIAL  
2 understand that those were included in what we  
3 have been discussing as schedule B?  
4 A. No. It was -- I thought it was part  
5 original repo transaction. That was my  
6 understanding at that time. I know that's not the  
7 case now but at that time, I thought it was  
8 part -- to satisfy the additional shortcomings for  
9 the repo.  
10 Q. Have you subsequently gained an  
11 understanding that that billion and change  
12 transferred on the 19th was part of schedule B?  
13 A. Yes.  
14 MR. SHAW: Asked and answered.  
15 Q. Thank you.  
16 Do you recognize the document that I  
17 have marked as 155? Do you recognize Exhibit  
18 155B?  
19 A. I do.  
20 Q. And can you tell me how it is that you  
21 recognize it?  
22 A. The fact that my boss' boss put this  
23 out to different people basically saying that of  
24 the 1.95 billion, we have made all deliveries to  
25 them, that satisfied that.

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1 DENIG - CONFIDENTIAL  
2 that last one. That, that column, that totaled  
3 the 269, it had a column heading called Lehman  
4 market value.  
5 Q. And that 269.9 million is the same  
6 figure as the 269.9 that you see reflected on this  
7 last page?  
8 A. Yes.  
9 Q. 155?  
10 A. Yes.  
11 Q. The line below that 269.9 million  
12 reads 074-transferred 9/30/09. Do you see that?  
13 A. Yes.  
14 Q. I am assuming -- I hadn't noticed it  
15 before, that that's an error and the date should  
16 be 9/30/08?  
17 A. Oh, yeah. All of them.  
18 Q. And just so we have a clear record, it  
19 is your understanding that the dates reflected on  
20 the last page of Exhibit 55B have an error?  
21 A. Yes.  
22 Q. And is it your understanding that the  
23 days of 9/19, 9/29 and 9/30 are not as reflected  
24 here, 2009, but actually 2008?  
25 A. That's correct.

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1 DENIG - CONFIDENTIAL  
2 Q. The line entry 074 transferred 9/30/09  
3 or 9/30/08, do you understand that to be a  
4 transfer from Lehman's DTC box 074 to Barclays of  
5 a little over 161 million dollars worth of  
6 securities?  
7 A. Yes.  
8 Q. Were you involved in that transfer,  
9 Ms. Denig?  
10 A. I was not.  
11 Q. Do you know who at Lehman was?  
12 A. Neal Ullman.  
13 Q. Is there a reason that you are aware  
14 of that you were not involved in that transfer?  
15 A. Well, at this particular time, I was  
16 on to my next project or working on getting the  
17 asset, rid the assets off of Lehman's books, so  
18 I -- it was passed to somebody else at that point.  
19 Q. Can you give me a little more detail  
20 on your next project getting rid of the assets --  
21 A. Meaning we had reflected the sale of  
22 defaulted repo on Lehman books and records to  
23 reduce the balance sheet of that.  
24 Q. The entry for BoNY tripledge in 9/19,  
25 what should be 08 is 1.155,820,860 billion?

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2 firm of Quinn, Emanuel, Urquhart, Oliver & Hedges.  
3 We represent the committee of unsecured creditors.  
4 I am going to ask you a few follow-up questions to  
5 something that Mr. Hine asked you about today. If  
6 you could look at 243 in front of the witness,  
7 could you take a second to look at it.  
8 A. OK.  
9 Q. I believe you testified earlier that  
10 this e-mail string started as series of phone  
11 calls between you and Mr. Haska when you were  
12 driving home?  
13 A. Yes.  
14 Q. Do you remember the subject of those  
15 phone calls?  
16 A. Yes.  
17 Q. Could you just tell us what was  
18 changed?  
19 A. Basically we had no cash, that after  
20 everything was all said and done, there was a  
21 shortfall of cash in the 21 billion range.  
22 Q. Did you have any --  
23 A. We thought, like my original thought  
24 pattern was we messed up on some type of booking.  
25 He was asking me about that and when I got back, I

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1 DENIG - CONFIDENTIAL  
2 A. Um-hm.  
3 Q. Do you have any understanding of  
4 whether that's an accurate number or not?  
5 A. I do not and in the previous  
6 documents, it was 1 billion, 035.  
7 Q. So if I wanted to know if that was  
8 accurate or not, would I have to talk to  
9 Mr. Forrest?  
10 A. You would.  
11 Q. Do you have any involvement in  
12 transfers of assets at the options clearing  
13 corporation from Lehman to Barclays?  
14 A. No.  
15 MR. SHAW: You need to speak.  
16 A. I did speak first.  
17 MR. OXFORD: Ms. Denig, thank you very  
18 much for your testimony. I appreciate your  
19 time. I don't have any further questions at  
20 this time.  
21 A. Great, thank you.  
22 (Recess)  
23 EXAMINATION BY  
24 MR. DAKIS:  
25 Q. My name is Robert Dakis from the law

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2 checked over everything and came back and said no,  
3 all our deliveries made and there were no other  
4 additional issues. Then we come to realize it was  
5 these other factors that came about.  
6 Q. And what do you mean by you checked  
7 over everything?  
8 A. When I got home I logged on to my  
9 machine, we have remote access at work. I looked  
10 over the contracts we had, literally by paging  
11 down and looking at the delivery instructions if  
12 they made or not based on MTA, at that point MTA  
13 and all our systems were still good.  
14 Q. You were able to tell that night how  
15 much cash went in and what securities went out?  
16 A. I can tell what securities went out.  
17 The cash I didn't have any reflection of. And  
18 that's what the cash tickets still in fail means.  
19 It says, "All cash tickets are still in fail,"  
20 that was because cash management would clear  
21 those. I verified that we made delivery of all  
22 the collateral that we had to.  
23 Q. During this period late at night, did  
24 you have any phone calls with anyone else at  
25 Lehman Brothers?

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1 DENIG - CONFIDENTIAL  
2 A. I did not.  
3 Q. Did you have any phone calls with  
4 anyone at Barclays?  
5 A. I did not.  
6 Q. Could you turn to page 3 of the  
7 exhibit, the second sentence of the e-mail string  
8 on page 3, and this is an e-mail from you to Jim  
9 Hraska and says, "Even though we took the TIBs  
10 out, we replaced it with other collateral." Could  
11 you just explain to me what you meant by we took  
12 the TIBs out?  
13 A. TIBs is a particular type of asset.  
14 They are Treasury Inflationary Bonds. They  
15 were -- they were part of the 8 billion shortfall.  
16 When originally we delivered -- from the original  
17 list of assets that we were supposed to send to  
18 Barclays because we come to realize that those  
19 assets were GCF collateral that went back to FICC  
20 in the morning, we gave them something different  
21 in return.  
22 Q. We need to slow down and pretend I  
23 know absolutely nothing about finance for the  
24 minute.  
25 A. As part of the original repo, there

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1 DENIG - CONFIDENTIAL  
2 A. Meaning, yes, mean it reconciles,  
3 saying that we gave them everything we had in the  
4 box, via the repo transaction. What we had left  
5 was 15 billion that we didn't do with the repo,  
6 there was an overnight repo that was being done.  
7 That didn't get put on. It didn't get booked  
8 again. And then there was 5 billion worth of  
9 racers that were definitely not going.  
10 So "ties out" is the collateral, the  
11 value of the collateral that Barclays took the  
12 night before, they didn't take this time, so  
13 that got left in the box and this 5 billion  
14 dollars worth of racer trades also got left in  
15 the box. That's the 21 billion. We didn't  
16 have any other liquidity providers giving us  
17 cash for that collateral, so we were short cash  
18 which we needed a box loan for.  
19 Q. And if I remember correctly, Chase  
20 provided that box loan?  
21 A. They did.  
22 Q. And the 15 billion dollars of  
23 collateral that's left in the box, 8 billion of  
24 that is the collateral that Barclays said that  
25 they didn't want as part of the repo?

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2 was a list that we got from somebody saying, OK,  
3 deliver these assets. My guys went and booked all  
4 the trades, but then it reflected that we didn't  
5 actually have position in a lot of these cases  
6 because of subsequent issues with the way the  
7 collateral is financed.  
8 So we substituted them for different  
9 ones, but like collateral, worth around the same.  
10 So what I was telling him is what we substituted  
11 was for the same value. So that's not the  
12 problem, and they -- and those, in fact, did get  
13 delivered.  
14 Q. And this is all being caused by the 8  
15 billion dollars of securities that Barclays didn't  
16 want to take delivery of or is this a different  
17 issue?  
18 A. This was a different issue, start of  
19 the day. When we first started doing the  
20 transaction, we realized this.  
21 Q. Turning now to page 1 of the e-mail  
22 string, the first e-mail on this page, Mr. Hraska  
23 writes to you "ties out" and then has underneath a  
24 couple of figures. Do you understand what he  
25 meant by "ties out"?

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1 DENIG - CONFIDENTIAL  
2 A. Oh, I have no idea. That part I  
3 don't -- you mean the excluded part?  
4 Q. Yeah?  
5 A. The exclusion? Yeah, I wasn't privy  
6 to that.  
7 Q. Do you know who would know that?  
8 A. The -- probably the Treasury folks,  
9 Paolo Tonucci and his teams.  
10 Q. One more sort of general question, at  
11 the time this e-mail string is being drafted, you  
12 said there was -- I believe it says, "The cash  
13 booked is still 44.2 billion dollars." That's on  
14 page 3?  
15 A. That's right.  
16 Q. We have been saying today that the  
17 cash at some point increased from 44.2 to 45  
18 billion, correct?  
19 A. That's correct.  
20 Q. Do you know when Barclays paid that  
21 other 800 million?  
22 A. They paid it on 9/18. They paid the  
23 whole 45 billion which is why I needed to reflect  
24 that on my trades.  
25 Q. At 1 o'clock in the morning on the

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1 DENIG - CONFIDENTIAL  
2 19th, you said the cash was still at 44.2?  
3 A. Meaning I knew they paid 45 and I  
4 didn't change them. I hadn't changed it yet  
5 because it was 1:35 in the morning and I didn't  
6 feel like it.  
7 Q. Understandable.  
8 MR. DAKIS: I have nothing further. I  
9 understand Mr. Hine has a few more  
10 questions.  
11 EXAMINATION BY  
12 MR. HINE:  
13 Q. I have a series of fairly ministerial  
14 questions about a couple of documents I want to  
15 run past you. We talked all during the day about  
16 pricing and where different prices come from.  
17 Some come from Chase. Some come from BoNY. Some  
18 come from the GPS system. So I wanted to see if  
19 we could nail down different documents and where  
20 that pricing came from if you could.  
21 So let me start with what has  
22 previously been marked as Exhibit 234, which is a  
23 spreadsheet after -- but when you get past the  
24 e-mail, the spreadsheet is entitled, "BarCap,  
25 9/18/08 with price and MV.XLS." Do you see that?

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1 DENIG - CONFIDENTIAL  
2 have had a chance to look at it.  
3 A. Are these different documents?  
4 Q. Well, I was going to ask you that  
5 question. First of all, have you ever seen this  
6 document before?  
7 A. No.  
8 Q. No?  
9 A. I guess I had to, I sent it, but I  
10 don't --  
11 Q. Let me --  
12 A. Is it broken up into different  
13 columns?  
14 Q. I don't know. This is how we received  
15 it.  
16 A. It is funny because I recognize the  
17 first before the first blue, but the two middle  
18 sections here, I don't recognize, and then I  
19 recognize the last section.  
20 Q. Let's take them one at a time then.  
21 First of all, the attachment is entitled  
22 74-636.XLS?  
23 A. Um-hm.  
24 Q. Do you have any familiarity with that  
25 spreadsheet, a spreadsheet entitled that?

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1 DENIG - CONFIDENTIAL  
2 Do you know the source of the valuation data  
3 that's embodied in that spreadsheet?  
4 A. There is a pricing source in the  
5 second to last column.  
6 Q. Right?  
7 A. Right? You mean how MTS has its  
8 pricing hierarchy.  
9 Q. These are MTS prices, correct?  
10 A. MTS -- TMS in a lot of cases --  
11 sometimes it reflects Chase, if Chase is the one.  
12 Q. There is no Chase entries there?  
13 A. I don't see any Chase entries.  
14 Q. So that chart is based on MTS pricing  
15 data?  
16 A. Yes.  
17 Q. That is all I have for that chart.  
18 Let's mark this.  
19 (Exhibit 262, document Bates stamped  
20 74-636.XLS marked for identification, as of  
21 this date.)  
22 Q. Ms. Denig, I have handed you a  
23 document marked as Exhibit 262 which is a new  
24 document. I wanted to give you a second to look  
25 at it. I will ask you a similar question once you

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1 DENIG - CONFIDENTIAL  
2 A. Yes.  
3 Q. And what is that?  
4 A. It is just basically all the  
5 collateral that -- individual pieces that went to  
6 Barclays.  
7 Q. OK.  
8 A. And all the details, basically all the  
9 trade details.  
10 Q. From those two boxes?  
11 A. Yeah.  
12 Q. Is that the first spreadsheet we see  
13 here attached?  
14 A. Yes, I don't -- I don't know -- I  
15 can't insure that this is complete, but that's  
16 what it looks like. I don't know what this is.  
17 Q. OK, we will get to -- take it section  
18 by section. In the first section in front of the  
19 first blue sheet, you say you recognize the  
20 spreadsheet but you can't determine whether it is  
21 complete?  
22 A. Right.  
23 Q. Do you know what the source of the  
24 pricing data is for that spreadsheet?  
25 A. GFS.

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1 DENIG - CONFIDENTIAL  
2 Q. Lehman's GFS system?  
3 A. Yes.  
4 Q. If we turn to the second spreadsheet  
5 which is behind the first blue tab and you say you  
6 don't recognize that spreadsheet?  
7 A. I don't. And the only thing that is  
8 throwing me off is the "deal MOP" in the first  
9 column. I never -- I never seen that before.  
10 Q. So you couldn't tell me what the  
11 source is for this pricing data?  
12 A. No, I am sorry.  
13 Q. OK. Let's turn to the third  
14 spreadsheet which is behind the second blue tab  
15 and I have the same question for you.  
16 A. The GFS.  
17 Q. You do recognize this spreadsheet?  
18 A. Yes.  
19 MR. SHAW: I think you skipped one.  
20 A. This one? Yeah, I don't recognize  
21 this either.  
22 Q. So you don't know the source of that  
23 pricing data?  
24 A. I don't.  
25 Q. Let's skip to the fourth spreadsheet

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1 DENIG - CONFIDENTIAL  
2 Q. What is it?  
3 A. Well, in particular, no. But it is  
4 along the same lines that it was produced out of  
5 GFS and it is something that I did.  
6 Q. OK. Very good.  
7 A. The signature and column heading.  
8 Q. OK. Let's mark this.  
9 (Exhibit 263, e-mail dated September  
10 19, 2008 at 4:26 p.m. marked for  
11 identification, as of this date.)  
12 Q. Handing you a copy of another document  
13 which was marked as Exhibit 263 which is an e-mail  
14 dated September 19 and attached to it is a  
15 spreadsheet as well. My first question is do you  
16 recognize this document?  
17 A. Yes.  
18 Q. And what is this document?  
19 A. This document again is all the assets  
20 that -- just a data dump of old assets that we  
21 knew were delivered on 9/18 to Barclays.  
22 Q. And the title of this attachment is  
23 "BarCap 9/18/08" with price and  
24 "MV-074-636-revised price.XLS," correct?  
25 A. That's correct.

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1 DENIG - CONFIDENTIAL  
2 in the packet which is behind the third blue tab.  
3 Do you recognize that one?  
4 A. Yes, I do.  
5 Q. Is that also part of a spreadsheet  
6 titled 74-636?  
7 A. I can't be sure. I really can't be  
8 sure. I don't think so because the column  
9 headings are different.  
10 Q. Do you know the source of pricing  
11 data?  
12 A. This is definitely GFS, the data  
13 coming from here are the column headings that I  
14 get from GFS.  
15 Q. So this data is from the GFS system?  
16 A. Yes.  
17 Q. Finally we have the last spreadsheet  
18 in this package. Do you recognize this one?  
19 A. Yes.  
20 Q. What's the source of that pricing  
21 data?  
22 A. GFS.  
23 Q. Do you know what this spreadsheet is  
24 in particular?  
25 A. Yes.

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1 DENIG - CONFIDENTIAL  
2 Q. What is the source of the pricing  
3 information for this --  
4 A. GFS.  
5 Q. Spreadsheet?  
6 A. GFS.  
7 Q. Finally, if you could turn to an  
8 exhibit previously marked as 146B. I am going to  
9 ask you a similar question first based on perhaps  
10 if you could tell me from the title of the  
11 documents. Do you see -- if you need to look at  
12 the underlying spreadsheets, I can give you them  
13 too. First page there is a spreadsheet which is  
14 referenced with the title, "Barclays financing  
15 collateral list (bark ops) 09-20-2008.XLS." Do  
16 you see that?  
17 A. Um-hm.  
18 Q. Are you familiar with that  
19 spreadsheet?  
20 A. I am not.  
21 Q. Let me give you a copy of it then and  
22 see if it refreshes your recollection. I am  
23 handing you a copy of an exhibit that previously  
24 has been marked as 84B which I understand to  
25 contain that spreadsheet and you will see the

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<p>1 DENIG - CONFIDENTIAL</p> <p>2 first page, it references the title of the</p> <p>3 attachment with that same title. Do you see that?</p> <p>4 A. Um-hm. Yes.</p> <p>5 Q. If you turn to the spreadsheet, my</p> <p>6 first question is, have you ever seen that</p> <p>7 spreadsheet before?</p> <p>8 A. I can't say that I have.</p> <p>9 Q. Could you tell from the spreadsheet</p> <p>10 whether it is generated through the Lehman system</p> <p>11 or the Barclays system?</p> <p>12 A. It is generated in the Barclays</p> <p>13 system.</p> <p>14 Q. OK.</p> <p>15 A. I can tell from the trading books that</p> <p>16 these are booked into.</p> <p>17 Q. OK. If you look on the fourth column,</p> <p>18 column D of the spreadsheet, next to market value,</p> <p>19 do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know what the source is of that</p> <p>22 pricing data?</p> <p>23 A. No idea. This is mortgage collateral.</p> <p>24 It would be Impact, which is Barclays' settlement</p> <p>25 system, and they had their own pricing hierarchy.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. So is it correct to say --</p> <p>3 A. I just know from working at Barclays</p> <p>4 now but not from -- I don't know from this</p> <p>5 particular spreadsheet that that's what it was</p> <p>6 used. But if this is a dump from the settlement</p> <p>7 system at Barclays, then Impact, which is their</p> <p>8 settlement system, also has its own pricing</p> <p>9 hierarchy which is where their pricing mode and</p> <p>10 models would have come from.</p> <p>11 Q. It is the Barclays' comparable to the</p> <p>12 GPS system --</p> <p>13 A. GFS system --</p> <p>14 Q. -- GFS system that Lehman would have</p> <p>15 used?</p> <p>16 A. Yes.</p> <p>17 Q. This would not be BoNY numbers or</p> <p>18 Chase numbers?</p> <p>19 MR. SHAW: Objection, foundation.</p> <p>20 A. Yeah, I wouldn't be able to 100</p> <p>21 percent say. It is a spreadsheet.</p> <p>22 Q. So referring back to Exhibit 146B</p> <p>23 which is the e-mail Mr. Azerad sent you and James</p> <p>24 Hraska in connection with your reconciliation</p> <p>25 efforts, does that refresh in any way your</p>
Page 260	Page 261
<p>1 DENIG - CONFIDENTIAL</p> <p>2 recollection of --</p> <p>3 A. I do, I remember getting this e-mail,</p> <p>4 going what the hell is he talking about, we had</p> <p>5 five discrepancies, not a 1,065. So I don't</p> <p>6 remember even opening it up. It killed my e-mail</p> <p>7 box because it was 500 megabytes and I didn't</p> <p>8 think that the information was proper. So I don't</p> <p>9 think I did anything with it.</p> <p>10 Q. Aside from the death of your e-mail</p> <p>11 box, does it refresh your recollection as to the</p> <p>12 source of the pricing in any way that would be</p> <p>13 contained in that?</p> <p>14 A. For the Lehman stuff, in the</p> <p>15 beginning, when we started looking at prices, we</p> <p>16 took everything. We really took every price from</p> <p>17 GFS in every way we could.</p> <p>18 Q. But this spreadsheet --</p> <p>19 A. This spreadsheet is from GFS for the</p> <p>20 Lehman, for the Lehman side of the scenario and</p> <p>21 that would be from GFS.</p> <p>22 Q. I think you're paging through as you</p> <p>23 speak you are referring to the spreadsheet</p> <p>24 attached to Exhibit 146B, correct?</p> <p>25 A. That's correct.</p>	<p>1 DENIG - CONFIDENTIAL</p> <p>2 Q. And if I look on the cover page of</p> <p>3 146B, I see a spreadsheet at the bottom entitled</p> <p>4 "LEH/BARReconciliation.XLS," do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that on the first page of</p> <p>7 that exhibit?</p> <p>8 A. Um-hm. Bar rec. Yup.</p> <p>9 Q. So that spreadsheet is based on Lehman</p> <p>10 pricing data?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Do you have any knowledge of the first</p> <p>13 spreadsheet, whether that's based on -- I believe</p> <p>14 you said you think it is based on Barclays pricing</p> <p>15 data?</p> <p>16 A. Yes.</p> <p>17 Q. But you're not sure?</p> <p>18 A. I am not sure.</p> <p>19 Q. So now if we go one last, look further</p> <p>20 down on that cover e-mail, it talks about a</p> <p>21 corrected spreadsheet. Do you see the spreadsheet</p> <p>22 entitled, "Corrected Thursday transfers to</p> <p>23 Barclays BONY, agreed." Do you see that?</p> <p>24 A. Yes. It means that it is included</p> <p>25 9/19's -- what do you call it. 9/19's transfers</p>



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1 DENIG - CONFIDENTIAL  
2 as well which is probably why it was corrected.  
3 Q. But do you have any understanding of  
4 where the pricing data came from for that  
5 corrected spreadsheet?  
6 A. No. That spreadsheet came from  
7 Magics, so I don't know how magic gets its  
8 pricing.  
9 Q. Magic is what?  
10 A. Front end system within Lehman.  
11 Q. Lehman or Barclays?  
12 A. Lehman.  
13 Q. So the corrected spreadsheet came from  
14 the Lehman system?  
15 A. Yes.  
16 Q. But you are not familiar with how it  
17 was derived?  
18 A. Right.  
19 Q. When you say Magics, is that different  
20 than the GPS prices?  
21 A. Yes. GFS.  
22 Q. I am sorry. Magics has -- Magic is a  
23 Lehman system, correct?  
24 A. Yes.  
25 Q. And it has pricing data in it?

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1 DENIG - CONFIDENTIAL  
2 MR. SHAW: Nope.  
3 Anyone else have any questions?  
4 MR. HINE: I think we are concluded.  
5 (Time noted: 3:55 p.m.)  
6  
7 NANCY DENIG  
8  
9 Subscribed and sworn to  
10 before me this day  
11 of , 2009.  
12  
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1 DENIG - CONFIDENTIAL  
2 A. Yes.  
3 Q. Is that pricing data different from  
4 the pricing data from the GFS system?  
5 A. It could be.  
6 Q. So that's --  
7 A. There is no consistent pricing source.  
8 Q. OK. So the pricing information that  
9 went into this corrected spreadsheet entitled  
10 "Corrected Thursday transfers" was from the Magic  
11 system within Lehman?  
12 A. That's correct.  
13 MR. HINE: Thank you, that is all I  
14 have. Unless, Jonathan, you have any  
15 questions.  
16 (Continued on next page for jurat)  
17  
18  
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21  
22  
23  
24  
25

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1 DENIG - CONFIDENTIAL  
2  
3 CERTIFICATE  
4 STATE OF NEW YORK )  
5 )ss:  
6 COUNTY OF NEW YORK)  
7 I, MARY F. BOWMAN, a Registered  
8 Professional Reporter, Certified Realtime  
9 Reporter, and Notary Public within and for  
10 the State of New York, do hereby certify:  
11 That NANCY DENIG, the witness whose  
12 deposition is hereinbefore set forth, was  
13 duly sworn by me and that such deposition is  
14 a true record of the testimony given by such  
15 witness.  
16 I further certify that I am not  
17 related to any of the parties to this action  
18 by blood or marriage and that I am in no way  
19 interested in the outcome of this matter.  
20 In witness whereof, I have hereunto  
21 set my hand this 21st day of August, 2009.  
22  
23  
24 MARY F. BOWMAN, RPR, CRR  
25

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<p>1 DENIG - CONFIDENTIAL</p> <p>2</p> <p>3 INDEX:</p> <p>4 WITNESS EXAM BY: PAGE:</p> <p>5 N. Denig Mr. Hine 6, 250</p> <p>6 Mr. Oxford 189</p> <p>7 Mr. Dakis 244</p> <p>8</p> <p>9 EXHIBITS</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 40%;">Exhibit No.</td> <td style="width: 40%;">Marked</td> <td style="width: 20%;"></td> </tr> <tr> <td>Exhibit 232 document Bates stamped</td> <td></td> <td>44</td> </tr> <tr> <td>10303555, two pages,</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 233 screen shot</td> <td>84</td> <td></td> </tr> <tr> <td>Exhibit 234 document Bates stamped</td> <td></td> <td>93</td> </tr> <tr> <td>10331692 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 235 document Bates stamped</td> <td></td> <td>96</td> </tr> <tr> <td>10253250 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 236 document Bates stamped</td> <td></td> <td>103</td> </tr> <tr> <td>10328102 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 237 document Bates stamped</td> <td></td> <td>108</td> </tr> <tr> <td>10252914 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 238 document Bates stamped</td> <td></td> <td>115</td> </tr> <tr> <td>BCI-EX4324 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 239 document Bates stamped</td> <td></td> <td>118</td> </tr> <tr> <td>BCI-EX13384 through 86</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 240 document Bates stamped</td> <td></td> <td>124</td> </tr> <tr> <td>BCI-EX18553 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 241 document Bates stamped</td> <td></td> <td>125</td> </tr> <tr> <td>BCI-EX17607 and 08 with attachment</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 242 document Bates stamped</td> <td></td> <td>129</td> </tr> <tr> <td>BCI-EX17576</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 243 e-mail dated September 19, 2008 at 1:43 a.m.</td> <td></td> <td>137</td> </tr> <tr> <td>Exhibit 244 document Bates stamped</td> <td></td> <td>147</td> </tr> <tr> <td>BCI-EX18095</td> <td></td> <td></td> </tr> <tr> <td>Exhibit 245 document Bates stamped</td> <td></td> <td>159</td> </tr> <tr> <td>BCI-EX99802 through 807 and 862 through 865</td> <td></td> <td></td> </tr> </table>	Exhibit No.	Marked		Exhibit 232 document Bates stamped		44	10303555, two pages,			Exhibit 233 screen shot	84		Exhibit 234 document Bates stamped		93	10331692 with attachment			Exhibit 235 document Bates stamped		96	10253250 with attachment			Exhibit 236 document Bates stamped		103	10328102 with attachment			Exhibit 237 document Bates stamped		108	10252914 with attachment			Exhibit 238 document Bates stamped		115	BCI-EX4324 with attachment			Exhibit 239 document Bates stamped		118	BCI-EX13384 through 86			Exhibit 240 document Bates stamped		124	BCI-EX18553 with attachment			Exhibit 241 document Bates stamped		125	BCI-EX17607 and 08 with attachment			Exhibit 242 document Bates stamped		129	BCI-EX17576			Exhibit 243 e-mail dated September 19, 2008 at 1:43 a.m.		137	Exhibit 244 document Bates stamped		147	BCI-EX18095			Exhibit 245 document Bates stamped		159	BCI-EX99802 through 807 and 862 through 865			<p>1 DENIG - 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<p style="text-align: center;">Page 268</p> <p>1 NAME OF CASE:</p> <p>2 DATE OF DEPOSITION:</p> <p>3 NAME OF WITNESS:</p> <p>4 Reason Codes:</p> <p>5 1. To clarify the record.</p> <p>6 2. To conform to the facts.</p> <p>7 3. To correct transcription errors.</p> <p>8 Page _____ Line _____ Reason _____</p> <p>9 From _____ to _____</p> <p>10 Page _____ Line _____ Reason _____</p> <p>11 From _____ to _____</p> <p>12 Page _____ Line _____ Reason _____</p> <p>13 From _____ to _____</p> <p>14 Page _____ Line _____ Reason _____</p> <p>15 From _____ to _____</p> <p>16 Page _____ Line _____ Reason _____</p> <p>17 From _____ to _____</p> <p>18 Page _____ Line _____ Reason _____</p> <p>19 From _____ to _____</p> <p>20 Page _____ Line _____ Reason _____</p> <p>21 From _____ to _____</p> <p>22 Page _____ Line _____ Reason _____</p> <p>23 From _____ to _____</p> <p>24 _____</p> <p>25 _____</p>																																																																																																																																																																																														